

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

R.M.S. TITANIC, INC.,
SUCCESSOR IN INTEREST TO
TITANIC VENTURES, LIMITED
PARTNERSHIP,

Plaintiff,

v.

THE WRECKED AND ABANDONED
VESSEL, ETC.,

Defendant.

CIVIL ACTION NO.
2:93cv902

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

October 25, 2018

BEFORE: THE HONORABLE REBECCA BEACH SMITH
Chief United States District Judge

APPEARANCES:

KALEO LEGAL
By: Brian A. Wainger
And
McGUIRE WOODS LLP
By: Robert W. McFarland
Counsel for R.M.S. Titanic

1 APPEARANCES CONTINUED:

2
3 UNITED STATES ATTORNEY'S OFFICE

4 By: Kent Porter

5 Assistant United States Attorney

6 Counsel for Amicus United States

7 THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

8 By: Jackie Rolleri

9 VANDEVENTER BLACK LLP

10 By: Edward J. Powers

11 Counsel for potential intervenors
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1 (Hearing commenced at 1:05 p.m.)

2 THE CLERK: In case 2:93cv902, R.M.S. Titanic,
3 Inc., et cetera, versus The Wrecked and Abandoned Vessel, et
4 cetera.

5 Mr. McFarland, Mr. Wainger, is the plaintiff ready
6 to proceed?

7 MR. McFARLAND: Good afternoon, Your Honor. Yes,
8 the plaintiff is ready to proceed.

9 THE COURT: Good afternoon.

10 THE CLERK: Mr. Porter, is the United States of
11 America ready to proceed?

12 MR. PORTER: Good afternoon, Judge Smith, we are
13 ready to proceed.

14 THE COURT: Ms. Roller is also here as an attorney
15 advisor for NOAA.

16 Counsel, at the last status hearing on September
17 18, 2018, the Court scheduled this follow-up hearing at the
18 request of the parties; namely, R.M.S.T. There are at least
19 three issues that the Court needs to look at today: First,
20 the bankruptcy court proceedings generally, and the entry of
21 the various documents and orders in those proceedings;
22 second, R.M.S.T.'s motion to approve the Asset Purchase
23 Agreement; and, third, if we get that far, to the National
24 Maritime Museum's motion to intervene.

25 There is still, obviously, the EYOS expedition, but

1 right now we have these other matters that we need to focus
2 more on today, particularly, the first two issues that the
3 Court mentioned.

4 The relevant filings, and I would note that the
5 Court has literally been bombarded with filings in the last
6 few days, and that there is no way humanly possible for an
7 individual to go through all of these in great detail and
8 take them in in great detail. So do not expect any final
9 rulings today.

10 I have reviewed everything, but I have not had the
11 opportunity, on some of the latest filings, to actually sit
12 down and take my notes and go through the way I do in a
13 detailed manner. I will tell you what has been filed all
14 within the last week, some as recently as this morning and
15 yesterday.

16 I would also note that they are coming directly
17 into chambers and will have to address filing these.
18 Everything that's come to the Court will be filed on the
19 public record in this case. So I would tell you that at a
20 threshold level.

21 First of all, there was R.M.S.T.'s periodic report
22 that was dated October 19th, 2018, and October 22nd, 2018;
23 then the bankruptcy court's order, the sale order,
24 basically, approving the Asset Purchase Agreement the Court
25 received from R.M.S.T. on October 22nd, 2018. The

1 transcript from the October 18, 2018 bankruptcy court
2 proceedings was not received until yesterday, October 24,
3 2018. Today letters from Ms. Klingelhofer, Mr. Gallo and
4 Mr. Nargeolet were received this morning.

5 Also, the debtor's notice of filing amendment
6 number 1 to the Asset Purchase Agreement was received from
7 R.M.S.T. this morning. Also, I believe that the status
8 reports from the United States that have come before the
9 Court have been on September 28, 2018; October 15, 2018; and
10 the latest one was yesterday, October 24, 2018.

11 So it's hardly been humanly possible to read all of
12 this, much less digest it in 24 to 48 hours. The Court has
13 found a number of matters that it has questions about, and I
14 would apprise you of that at the beginning of these
15 proceedings.

16 So why don't we proceed, I will start out asking
17 just some threshold questions to you, basically,
18 Mr. McFarland, and then we will proceed into some of the
19 details.

20 MR. MCFARLAND: Thank you, Your Honor. May it
21 please the Court. Rob McFarland. Jessica Sanders, the
22 cooperate secretary and vice president, is here with us
23 today on behalf of the company.

24 THE COURT: My first question to you is what is the
25 magic of the date of October 31st, 2018, that the Court has

1 to approve this Asset Purchase Agreement? So I'm perceiving
2 a situation where some other entity is making their
3 emergency the Court's emergency unnecessarily.

4 MR. McFARLAND: No, Your Honor. I think the
5 urgency, as this Court has heard before, is the need for
6 this Court's approval of the APA and the stock sale so that,
7 if there is nothing else, the transaction can close as soon
8 as possible.

9 THE COURT: Well, what if this Court does not
10 approve it by October 31, 2018, and the transaction will not
11 close?

12 MR. McFARLAND: It will not close unless there is
13 an extension, Your Honor, I believe, as the APA and the
14 amendment sets forth this Court's approval by October 31st.
15 That is in the APA. I don't speak for, obviously, the
16 purchaser, whether that date could be amended by agreement.
17 I don't know and would not be directly involved in that,
18 but, obviously, the Court appreciates the transactions to
19 get everything done will take some time after this Court's
20 approval, and in the meantime the financial situation of
21 R.M.S.T. and its parent company Premier is not getting any
22 better.

23 THE COURT: Well, that brings me to two other
24 questions. Who represents the purchaser for the Asset
25 Purchase Agreement? Who represents the stalking horse

1 purchaser? Why haven't they made an appearance in this
2 court? Who represents them? Do you?

3 MR. McFARLAND: I do not, Your Honor.

4 THE COURT: Well, who represents the purchaser
5 here?

6 MR. McFARLAND: I believe there are at least two
7 counsel, Your Honor: Mr. Scott Grossman represents -- there
8 are three entities, as the Court is aware, that comprise the
9 stalking horse purchaser. Mr. Scott Grossman represents one
10 of the entities, and Ms. Jennifer Feldsher represents one of
11 the other entities, and have represented them throughout the
12 negotiation of the APA and then the purchase in the
13 bankruptcy proceedings.

14 But the stalking horse purchaser, Your Honor, is,
15 obviously, not a party to this proceeding.

16 THE COURT: I understand, but that's what you have
17 referred to throughout, the stalking horse purchaser, and,
18 actually, the stalking horse purchaser is the prevailing
19 purchaser. Am I not correct?

20 MR. McFARLAND: Correct, Your Honor. In keeping
21 with the bankruptcy court's approval and order of last week,
22 October 18th.

23 THE COURT: Well, why haven't those entities
24 appeared in this court to subject themselves to the
25 jurisdiction of this Court?

1 MR. McFARLAND: Well, Your Honor, those entities
2 will -- when I say entities, but PAHL or the stalking horse
3 purchaser entity.

4 THE COURT: We will call them PAHL, then.

5 MR. McFARLAND: PAHL will be the parent corporation
6 similar to how Premier Exhibitions is the parent corporation
7 of R.M.S.T. But this proceeding before Your Honor has
8 always involved R.M.S. Titanic and as now as the salvor in
9 possession and owner of the artifacts, subject to the
10 covenants and conditions as they apply.

11 But Premier is a parent company, and in that sense
12 the Court is well aware of its status, and PAHL will be the
13 same. PAHL will be a parent company, but PAHL would not
14 be -- these are separate, distinct corporate entities, Your
15 Honor, and the Court appreciates the need for that.

16 They have separate boards of directors, employees
17 will be employed by the R.M.S.T. entity, as they were
18 before, curation, conservation done by the R.M.S.T. entity.
19 They are separate, so they are really -- PAHL would not
20 be -- is not a party in this proceeding and would not be an
21 appropriate party to this proceeding, and it's not a party
22 to the covenants and conditions.

23 THE COURT: Well, I've got some questions about
24 that. So we will talk about some jurisdictional issues in a
25 moment, but I don't agree with you. The museum felt it

1 needed to intervene in these proceedings when they were
2 interested in purchasing, and I don't understand why PAHL
3 has not presented itself to the jurisdiction of this court
4 if it wants approval of this Asset Purchase Agreement, which
5 has a number of troubling provisions, which I will go
6 through with you. So in my mind I question whether this has
7 all really been an arm's length transaction.

8 MR. McFARLAND: Absolutely, Your Honor. There is
9 no question about it. The bankruptcy court has reviewed
10 the transaction.

11 THE COURT: There were some things in the
12 bankruptcy court transcripts where they were questioning
13 whether you are really at an arm's length transaction here
14 when you look at the different players and the cross
15 pollinization of the players.

16 MR. McFARLAND: Your Honor, I'm happy to address
17 them more specifically, but the players are different.
18 There are three entities that make up PAHL and then some
19 individuals who are secured investors, but this was a
20 heavily negotiated transaction, and, in fact, my client,
21 R.M.S.T. and Premier Exhibitions, went back and was able to
22 increase the purchase price, and that's why we provided the
23 Court the amendment from September of 2018 so that the
24 purchase price actually increased from, I believe, 17.5
25 million to 19.2, or I may be just a smidgen off, but 17 to

1 19. So this is absolutely a heavily negotiated transaction
2 between the stalking horse purchaser and Premier Exhibitions
3 and its subsidiary R.M.S.T., in which the purchaser was
4 represented by very able counsel, multiple counsel.

5 I'm here today on behalf of R.M.S.T., and, really,
6 what we are asking this Court to do, having obtained the
7 bankruptcy court's approval, is to look at right now the
8 approval of the APA, pursuant to, I think it's Paragraph 6
9 that the APA provides for, and the stock sale.

10 THE COURT: In your own words, under this Asset
11 Purchase Agreement, tell the Court the role of PAHL, the
12 role of R.M.S.T., and how it differs in any way from Premier
13 and R.M.S.T.

14 MR. McFARLAND: I don't think it really will, Your
15 Honor. That's one of the messages we want to convey to the
16 Court. Now, just as Premier is the parent corporation and
17 over -- in a sense has some oversight, what R.M.S.T. is a
18 separate corporate entity and has had a separate board of
19 directors and will have a separate board of directors and
20 will continue to operate in that sense.

21 Premier here, R.M.S.T. here, I guess I'm going to
22 move my hands so that the R.M.S.T. is above as the parent
23 corporation, but they are distinct corporate entities and
24 will remain so now with PAHL and R.M.S.T. That's an
25 important thing, I think, in one sense also for the safety

1 of the artifacts, if you will. The artifacts were not
2 brought into the -- could not be brought into the bankruptcy
3 proceeding because they are distinct corporate entities and
4 that will remain.

5 I also want to say, Your Honor, that the bankruptcy
6 court in its order filed October 19th, finds in Section K
7 that this is a good faith transaction. There was no
8 collusion.

9 THE COURT: I didn't say collusion. Arm's length
10 and collusion are two different things.

11 MR. McFARLAND: I think they find, Your Honor, also
12 that the transaction was completed in good faith without
13 collusion, and from arm's length's bargaining positions.
14 This was a heavily -- and I wasn't directly involved in the
15 transactional aspect, but I know it was a heavily
16 negotiated, contested and agreement reached that became the
17 APA and then with the amendment in terms of the purchase
18 price.

19 THE COURT: Well, let me ask you this. Assuming,
20 then, and I'm assuming, not finding, assuming that PAHL is
21 simply stepping into the shoes of Premier but is somehow
22 paying R.M.S.T. a little over 19 million for the artifacts,
23 why do they want to purchase the artifacts? For what
24 reason?

25 MR. McFARLAND: Well, let's go back for a second,

1 Your Honor. Because with R.M.S.T., PAHL is purchasing the
2 stock. They are not purchasing the artifacts. I know the
3 Court recognizes it is a distinction here because the
4 artifacts will remain under the ownership of R.M.S. Titanic,
5 that is important, and they remain subject to the covenants
6 and conditions.

7 THE COURT: We will go through some provisions that
8 I've read, and I'm going to go back and read a lot of this
9 again that would not support, in my opinion, at this
10 juncture the last statement that you've made. Why would
11 somebody pay you 19.1 million for artifacts that you claim
12 you still own? They are buying the artifacts. It's an
13 Asset Purchase Agreement. They are buying the assets of
14 R.M.S.T.

15 MR. McFARLAND: They are buying the assets of
16 Premier Exhibition, which is distinct from the assets of
17 R.M.S.T., Your Honor. This Court -- this transaction,
18 recognizing the covenants and conditions and that any
19 trustee is going to be subject to them, and recognizing that
20 situation, this transaction was negotiated specifically in
21 part because so that it would be set up as a stock sale.

22 So there is an overall purchase price, but that
23 includes -- my understanding is includes the assets of
24 Premier, and then as there is a stock sale for R.M.S.T., but
25 very important distinction, Your Honor.

1 THE COURT: Well, let me go back to this, then.
2 You made some responses, I believe, to NOAA's initial letter
3 to the Court, and it's the September 18th status hearing,
4 Exhibit 3. The United States submitted a copy of a letter
5 NOAA had sent to R.M.S.T. requesting certain information on
6 the sale to the purchaser, and R.M.S.T. submitted its
7 response to this initial letter.

8 Well, I've got a number of questions about your
9 response, but, first of all, I notice here that you say the
10 responsibilities of R.M.S.T.'s employee Ivy Ying Li,
11 registrar for relics and Chinese literary editor job,
12 includes researching "the Chinese Titanic market."

13 Now, why is somebody researching the Chinese
14 Titanic market? Is it for a potential sale or is it for
15 acquisition or what? You made that statement, and I quoted
16 it.

17 MR. McFARLAND: Understand, Your Honor. It's for
18 exhibition, Your Honor. One of the things that PAHL
19 believes can be done is better marketing of the exhibitions,
20 which would include China. So it's for exhibitions, Your
21 Honor.

22 THE COURT: You didn't say that, though. Research
23 into Chinese market is a pretty broad statement.

24 MR. McFARLAND: Well, and there is a current
25 exhibition in China, Your Honor, and we think that there are

1 more -- I shouldn't say we, PAHL believes there are more
2 opportunities there. I apologize to the Court if the
3 wording isn't as clear as it could be, but part of what
4 is -- and I think this is very beneficial in terms of the
5 Court's review. Part of what's happening here is a company,
6 the parent company that is out of money, obviously, as the
7 Court knows, and it affects the subsidiary in terms of
8 certain things.

9 Now we are having a new acquirer of Premier and the
10 stock acquirer of R.M.S.T. who comes in and is better
11 capitalized and can do things and provide opportunities,
12 including for R.M.S.T., including for the exhibition. So we
13 really think this is a very, very positive development, Your
14 Honor. And in terms of who's coming in, as the Court no
15 doubt read in the due diligence materials that we've
16 provided, this is going to be a Delaware entity, PAHL, with
17 a principal place of business still in Atlanta, Georgia, and
18 with five-member board of directors, three of whom --
19 assuming that the transaction goes through, three of whom we
20 have identified and will come in the closing and then the
21 other two will be appointed after closing.

22 So I think this is a very positive thing. I
23 certainly want to address whatever questions the Court has.

24 THE COURT: Well, I'm trying to get my questions,
25 but you keep trying to convince me -- words are words --

1 this is a very positive thing, but I've got a lot of
2 questions about the positivity of it.

3 MR. McFARLAND: I will put my advocacy aside as
4 best I can, Your Honor, and I appreciate the Court's
5 patience.

6 THE COURT: Well, I'm going through your responses
7 right now that I had questions. So you say in that response
8 that I was just referring to that you will continue to abide
9 by the C&Cs consistent with past practices, but R.M.S.T is
10 no longer the owner. You're selling the assets.

11 MR. McFARLAND: Not R.M.S.T., Your Honor. What is
12 being sold -- and this is in the Asset Purchase Agreement
13 subsection (i)(ii), Article I on Page 3, and I recognize
14 it's a lot of documents for the Court, but Page 3 of the APA
15 specifically provides what is being acquired from R.M.S.T.
16 is its stock, not an Asset Purchase Agreement as to R.M.S.T.

17 THE COURT: Then why do you call it an Asset
18 Purchase Agreement? Why don't you call it a stock purchase
19 agreement?

20 MR. McFARLAND: Because the overall -- remember,
21 it's not just R.M.S.T. that's involved here. Premier
22 Exhibitions is the parent company and really the larger of
23 the acquirees. So that's why it's called an Asset Purchase
24 Agreement, but it's specifically provided for that, as to
25 R.M.S.T., this is a stock sale. And we did this -- I say

1 we, but from the debtor's standpoint, it was recognized of
2 the covenants and conditions, and it was recognized from the
3 acquirer's standpoint, too, which is -- this is my
4 understanding, but it's why in the original APA there is a
5 provision for this Court's approval of the APA. Remember,
6 we've titled it as a stock sale because it is a stock sale.

7 We would, admittedly, Your Honor, be in a different
8 situation if we were coming to this Court for an entire
9 asset acquisition.

10 THE COURT: Let me review a few provisions with you
11 in that regard because it appears to this Court that there
12 is quite an endeavor to remove jurisdiction from this Court
13 over the covenants and conditions and the assets. I'm going
14 to point some things out to you, Mr. McFarland, and let you
15 respond to them.

16 As I say, it's been a lot to go through in a very
17 few days. Let me just start with the first provision, and
18 then I find that there is a contradiction of it in another
19 part of the agreement.

20 I'll just start it this way: The APA defines this
21 Court's approval as the admiralty court order. That's the
22 way it is labeled. It's the admiralty court order. Then
23 you have the Asset Purchase Agreement, and you have the sale
24 order. I'm reading from the APA, and this is a provision,
25 and it says modification of the APA is permitted, and I'm

1 not reading it word for word, but modification of the APA.
2 So you've got the admiralty court order, and all that is, is
3 this Court approving purchasing the assets. Then you've got
4 the sale order, and you've got the Asset Purchase Agreement.
5 Then you've got the Asset Purchase Agreement, and what it
6 says is, so if I approve the Asset Purchase Agreement, and
7 the bankruptcy court approves it through the sale order,
8 then that Asset Purchase Agreement provides that the APA is
9 permitted, a modification of the APA is permitted without
10 further order of the bankruptcy court provided that any
11 modification does not materially change the terms of the
12 APA.

13 Well, who's going to decide whether it materially
14 changes the provisions of the APA? That's like the fox
15 guarding the hen house. So what you're doing is saying,
16 District Court in Norfolk, Virginia, you approve the
17 admiralty court order; and bankruptcy court, you approve the
18 sale order; and then we have our Asset Purchase Agreement,
19 and we can go in and modify it as long as it doesn't
20 materially change the terms.

21 Who decides whether you're materially changing the
22 terms? You all are.

23 MR. McFARLAND: I think the intent, Your Honor, is
24 if --

25 THE COURT: The intent, it has to be the words.

1 The words, and the words say you can change that agreement
2 without any Court approval as long as it doesn't materially
3 alter it, and there's nothing in here that says what a
4 material modification is and who's going to be in charge of
5 it.

6 Now I'll give you all my questions here because
7 then there is another part of it. Then the bankruptcy
8 court, however, retains exclusive, and I put emphasis on
9 that word jurisdiction, to interpret, enforce and implement
10 as well as adjudicate disputes related to the sale order and
11 the APA.

12 So you are pulling everything away from this Court
13 if there is any dispute over this Asset Purchase Agreement
14 and how the covenants and conditions are being handled.
15 There are a couple more provisions here that are
16 troublesome. You're saying, bankruptcy court, you have the
17 exclusive jurisdiction over the APA.

18 Now, what if there is a dispute over the transfer
19 of these assets? What if there is a dispute over whether
20 you're following the covenants and conditions that have been
21 incorporated into the Asset Purchase Agreement? You're
22 leaving it up to the exclusive jurisdiction of the
23 bankruptcy court to make that determination.

24 I'm going to keep on here because there are so many
25 inconsistencies. Then in another part of this agreement you

1 have put in there, and I can't find it in my current notes,
2 but there is another place in the agreement that says if
3 disputes arise, New York law governs and the disputes
4 shall be determined in the state and federal courts in New
5 York.

6 So who has jurisdiction? Does the bankruptcy court
7 have exclusive jurisdiction? What jurisdiction does this
8 court have and what jurisdiction do the New York courts
9 have? There are so many pages here, but I know I read that,
10 and I know it's in there.

11 MR. McFARLAND: I think Your Honor is referring to
12 the order, correct, that was entered by the bankruptcy court
13 as opposed to the APA itself?

14 THE COURT: I assume that's where it is. I can
15 tell you there is so much there and there is so much
16 inconsistency, who is doing what, when and where?

17 MR. McFARLAND: Let me say this, Your Honor. To
18 the extent we are talking about assets, and there's a
19 disagreement or dispute about assets, that's something
20 that's going to involve the bankruptcy court with respect to
21 the sale.

22 To the extent we are talking about the artifacts
23 and their conservation, curation, preservation, maintenance,
24 or something that is covered by the C&Cs, absolutely, that's
25 this Court. We don't have any problem with that. That's

1 why, in part, the transaction is structured as it is.

2 So the bankruptcy court has a role in terms of
3 approving, essentially, the plan that came out for the sale,
4 and that's what they've done. The bankruptcy court and the
5 purchaser wanted this Court to weigh in on the APA, the
6 agreement and the stock sale, and essentially is that
7 transaction, from this Court's standpoint, going to result
8 in the same care of the artifacts and application of the
9 C&Cs to R.M.S.T. as they were before?

10 I'm here to tell you, absolutely, that's the case.
11 In fact, we have an agreement in a proposed order for the
12 Court. I realize the Court has tried to wrap its arms
13 around an awful lot of material in a short period of time,
14 but we have a proposed order for the Court that sets forth
15 exactly R.M.S.T.'s commitments, what it is going to continue
16 to do, that it's been doing and continue to do, but it's
17 never -- I want to say this, Your Honor, from R.M.S.T.'s
18 standpoint, it is never the thought that this Court would
19 not retain its jurisdiction over R.M.S.T. as to the
20 covenants and conditions.

21 THE COURT: But R.M.S.T. doesn't have those assets
22 because the assets belong to stock of R.M.S.T. I mean,
23 Premier's stock is totally being given to PAHL, and they are
24 the parent company.

25 MR. McFARLAND: Actually, Premier's assets are

1 being given to PAHL.

2 THE COURT: What is it? Is it a stock purchase
3 agreement, an asset purchase agreement? Make up your mind.

4 MR. McFARLAND: It's both. It was termed an Asset
5 Purchase Agreement because there is Premier Exhibitions, and
6 the assets of Premier are being acquired.

7 THE COURT: What are those assets?

8 MR. McFARLAND: The intellectual property rights,
9 leased rights.

10 THE COURT: Intellectual property right to what?

11 MR. McFARLAND: Remember, Premier does all kinds of
12 exhibitions.

13 THE COURT: It's body parts and this.

14 MR. McFARLAND: Dinosaurs and its contracts that
15 it's in existence for those exhibitions. So there are
16 assets of Premier Exhibitions that PAHL is acquiring. There
17 are subsidiaries of Premier separate from R.M.S.T.

18 THE COURT: The main asset of Premier is the
19 Titanic artifacts.

20 MR. McFARLAND: Certainly. Well, no, that's not an
21 asset of Premier, though, Your Honor. That's an asset of
22 R.M.S. Titanic. That is why this Court has absolute
23 jurisdiction over R.M.S. Titanic and the American artifact
24 collection, and that's not going to change.

25 THE COURT: Let me go to another provision, then,

1 of the APA, because what you're saying doesn't ring true
2 with this particular provision. I'm looking at the APA
3 Section 1.1A(ii)(xii), and it says here, as defined in
4 Section 8.5, "Artifacts and exhibitry" includes -- and I'm
5 quoting now from the APA -- "the exclusive salvage rights to
6 recover additional artifacts from the R.M.S. Titanic."

7 You are pulling the jurisdiction over salvage away
8 from this Court if in the APA you have given away your
9 exclusive salvage rights to recover. Then you're saying
10 that the jurisdiction to interpret the APA and enforce the
11 APA is either with the bankruptcy court or the courts in New
12 York. You are giving away. You're trying to just, number
13 one, do something I don't think you can. I'm not sure that
14 you even have future salvage rights at this point because if
15 another salvor came in to compete, you would have to show
16 that you have taken the necessary steps to maintain your
17 position as salvor in possession.

18 This Court has exclusive jurisdiction over
19 determining who is salvor in possession and the salvage
20 rights. You don't have, in my opinion, any authority to be
21 giving away the exclusive salvage rights to recover because
22 no future exclusive salvage rights go to R.M.S.T. So that
23 defies your statement.

24 Also, if R.M.S.T. has the exclusive salvage rights,
25 so how can Premier be giving away those exclusive salvage

1 rights to PAHL if what you say is correct that R.M.S.T. just
2 stays the same?

3 MR. WAINGER: Judge, if I may try to help explain.

4 THE COURT: Well, it's difficult for the Court to
5 deal with two and three attorneys like you've been doing in
6 the last few hearings. I decided when I came in today that
7 it just was not going to be four and five attorneys standing
8 up. I'll be glad to take a break, and you all can confer.
9 It's very difficult on the Court to have one person talking
10 and another person jumps up. You certainly may have an
11 opportunity to present later, but right now I'm asking these
12 questions to Mr. McFarland.

13 MR. WAINGER: Understood.

14 MR. McFARLAND: I think, Your Honor, in terms of
15 the bankruptcy court order that was entered on October 19th
16 in Paragraph 38, it specifically provides that R.M.S.T. is
17 out of the asset acquisition. It is strictly a stock sale.
18 This is Paragraph 38 that references, upon the closing,
19 again, assuming that the parties get to that, subject to the
20 conditions set forth in the Asset Purchase Agreement, the
21 Chapter 11 case shall be dismissed without further motion
22 hearing or court order.

23 THE COURT: I'm pulling the order. You can tell me
24 again.

25 MR. McFARLAND: Sure, Your Honor. This is the

1 order.

2 THE COURT: What Page?

3 MR. McFARLAND: Paragraph 38 and Page 35.

4 THE COURT: I'm there. That's a dismissal of the
5 bankruptcy.

6 MR. McFARLAND: Right. But, in other words,
7 R.M.S.T. is -- that's the title, R.M.S.T. So it's out. So
8 R.M.S.T.'s obligations are going to remain with this Court.
9 The bankruptcy court is not going to have any further
10 jurisdiction over R.M.S.T.

11 THE COURT: It says upon the closing subject to the
12 conditions in the Asset Purchase Agreement. The Asset
13 Purchase Agreement, and its interpretation, you have left
14 that with the bankruptcy court, and that's what the clause I
15 just finished reading you says, that the bankruptcy court
16 retains exclusive jurisdiction of any disputes regarding the
17 Asset Purchase Agreement and that you all can alter that as
18 long as it's not a material alteration.

19 That's why I was asking the questions about arm's
20 length because it's confusing to the Court why no one from
21 PAHL has made any appearance in this court, and,
22 consequently, again, who's watching the changes in the Asset
23 Purchase Agreement? This has been the way it's been for
24 years.

25 Right now the two parties would be Premier and

1 PAHL. So who's going to be monitoring those changes? All
2 this says is that in the case of R.M.S. Titanic, Inc., and
3 that's the party here that you are dismissed from the
4 bankruptcy.

5 MR. McFARLAND: Right. So the Court that would
6 still and has, and we have never said that this Court lost
7 jurisdiction over R.M.S.T., even in the bankruptcy as to the
8 artifacts and the covenants and conditions, this Court
9 retains that jurisdiction. The bankruptcy court would not
10 have jurisdiction over R.M.S.T., which, remember, R.M.S.T.
11 is the one still owning the artifacts.

12 THE COURT: How? How do you still own the
13 artifacts?

14 MR. McFARLAND: R.M.S.T. is the entity that this
15 Court granted the award to, Your Honor, subject to the
16 covenants and conditions as they apply. The award that was
17 given in 2011 is for R.M.S.T., who was the salvor,
18 obviously, and remain salvor and is the owner of the
19 artifacts. That's important.

20 THE COURT: But Premier is the parent company.

21 MR. McFARLAND: Correct, Your Honor, but they are
22 distinct corporate entities, and that's very important, and
23 it was very important in this bankruptcy that Premier was a
24 distinct corporate entity, and its assets did not include
25 the artifacts.

1 THE COURT: The bankruptcy is in the name of R.M.S.
2 Titanic, Inc.

3 MR. McFARLAND: Right. R.M.S.T. is a party in the
4 bankruptcy, no question about it. But R.M.S.T. as the owner
5 of the artifacts, the covenants and conditions apply to
6 R.M.S.T. and to anyone who would become a subsequent
7 trustee, and that was a protection, in a sense, as to the
8 artifacts. Very important part, Your Honor. That's why
9 this transaction, in part, was structured as it was, and I
10 appreciate what the Court is saying, but I guess maybe we
11 are moving a little bit past each other because I think it's
12 actually very beneficial that this is strictly a stock sale
13 as to R.M.S.T., and its assets, the assets of R.M.S.T. are
14 the artifacts.

15 THE COURT: Somebody owns all the stock of
16 R.M.S.T., then they own the artifacts.

17 MR. McFARLAND: No, Your Honor. No, they don't.
18 In fact, one of the conditions that we have in discussions
19 with NOAA, and they agree upon, anything that is going to
20 happen to the collection, we are going to give this Court 60
21 days' notice.

22 THE COURT: You say that.

23 MR. McFARLAND: We are committed to it.

24 THE COURT: There are so many different provisions
25 in that Asset Purchase Agreement that somebody can hang

1 their hat on to say, but we were doing this, we didn't have
2 to give you notice. That provision of the Asset Purchase
3 Agreement was changed.

4 MR. McFARLAND: Nothing would be changed, Your
5 Honor, or could be changed that would affect this Court's
6 jurisdiction.

7 THE COURT: Where do you say that?

8 MR. McFARLAND: Part with the order that we would
9 like the Court to enter, that we've discussed with NOAA,
10 reviewed it. We have a proposed order for the Court, and
11 it's in the order this Court retains jurisdiction and
12 including a 60-day notice requirement.

13 THE COURT: Well, how do you explain this provision
14 where you're giving the exclusive future salvage rights?

15 MR. McFARLAND: I'm sorry, Your Honor. I did not
16 follow. Which provision are we at?

17 THE COURT: It's Section 8.5, "Artifacts and
18 Exhibitry" of the APA.

19 MR. McFARLAND: So, yeah, it's under the
20 definitions, Your Honor, but I think that's just defining
21 what artifacts and exhibitry are. Now, what would happen in
22 the future with respect to future exhibitions would be, in
23 part, governed by the covenants and conditions and this
24 Court's established admiralty law, et cetera.

25 I think this is just a definition, is what it's

1 intended to do. It doesn't really reference back to other
2 sections of the APA, but I think this is all part of the
3 definitions, just setting forth -- I think, in part, Your
4 Honor, what may help the Court is when you look at Article
5 I, which talks about the actual purchase and sale of assets,
6 and specifically 1.1(a)(ii), it emphasizes the purchaser is
7 acquiring the shares.

8 THE COURT: Somehow, maybe you need to connect a
9 road map for the Court because I still do not understand
10 when you say that you are not selling the artifacts,
11 R.M.S.T. went into bankruptcy, and you've got an asset.
12 What are your assets? Well, your artifacts and your
13 exhibitry, and you're selling those. That's your assets.
14 You own them. It says here that what artifacts and
15 exhibitry means, "The artifacts recovered from the R.M.S.
16 Titanic, along with the photos, videos, digital archives,
17 sonar maps and other tangible and intangible property
18 related thereto together with the exclusive salvage rights
19 to recover additional artifacts from the R.M.S. Titanic."

20 You don't have the ability to sell future exclusive
21 rights because a salvor can lose those rights. You have no
22 ability whatsoever to transfer any exclusive future salvage
23 rights. You have the ability to transfer your current
24 salvor-in-possession status for what that means. But you do
25 not have any ability to transfer exclusive future salvage

1 rights. This Court has jurisdiction over the Titanic. It
2 has been determined all the way up to the Supreme Court, and
3 this Court determines who has the salvage rights to the
4 Titanic.

5 Right now all you have, you are the current salvor
6 in possession, but that doesn't mean that you can't lose
7 that. You can have competing salvors come in and say, well,
8 wait just a minute. They haven't exercised those salvage
9 rights since so and so, and we've got this operation set up,
10 and the Court could declare a new salvor in possession.

11 So you're giving away something, in my opinion, you
12 cannot give away, and I would not approve an agreement that
13 says something that is legally incorrect. You cannot
14 transfer, you cannot do anything with exclusive salvage
15 rights into the future.

16 MR. McFARLAND: I think, Your Honor, this is just a
17 definition section.

18 THE COURT: What does it define? It defines what's
19 in the agreement when that's mentioned.

20 MR. McFARLAND: Well, it's just defining for
21 purposes of the agreement what is possessed by R.M.S.T.

22 THE COURT: You don't possess it. You possess the
23 current salvor-in-possession rights. You do not possess the
24 exclusive salvage rights into the future. That, you do not
25 have. The only thing you could transfer would be your

1 current salvor-in-possession status. You could not transfer
2 exclusive salvage rights into the future. That's a basic
3 problem I have because that implication is throughout this
4 agreement.

5 If PAHL thinks they are getting that, they are
6 being misled. They're not a party to this proceeding, but
7 PAHL needs to understand that that is not an asset that it
8 can legally purchase, nor would this Court approve of it
9 purchasing because, in my opinion, it divests this Court.
10 It's saying, I don't know. It's not even a legally correct
11 statement because no salvor in possession can give away
12 exclusive rights into the future because you can always lose
13 that right.

14 MR. McFARLAND: I appreciate what the Court is
15 saying. I think that can be dealt with in the order that
16 this Court would enter.

17 THE COURT: I wouldn't approve this agreement with
18 it in there. When I approve this agreement, and then I'm
19 letting an agreement go that you then said you can alter it,
20 as long as it's not a material alteration, and, by the way,
21 this Court doesn't have any jurisdiction of that to look at
22 your alterations or what you're doing with the Asset
23 Purchase Agreement because the exclusive jurisdiction rests
24 with the bankruptcy court and then in somewhere it talks
25 about the New York courts.

1 This was a lot of quick reading on that, but I was
2 looking for jurisdictional issues. I'm concerned about it.
3 I think there is a lot in here that would give a Court that
4 has for decades, over 25 years been managing the salvage of
5 probably one of the most important historic sites in the
6 world, and certainly ships wrecks in the world, to then
7 approve an agreement that somehow you think you can give
8 away the future exclusive salvage rights when you can't.

9 MR. McFARLAND: That is, Your Honor, and I think
10 when we get to it, we can show the Court in the order that
11 it's proposed, that is agreed upon with the United States
12 and NOAA, there is not an intention, and it is not provided
13 for in terms of giving away future exclusive salvage rights.

14 My client is not in any way attempting to undermine
15 or take away this Court's jurisdiction as to the salvage
16 action in the covenants and conditions.

17 THE COURT: I've got to be convinced of that. I've
18 got to be convinced that there is no end run around this
19 Court to take away, to manipulate the salvage rights, who
20 determines the salvage rights and these artifacts that are
21 to be kept as a full collection.

22 This is an extremely complicated agreement, and,
23 also, I haven't seen, if I have, I don't believe I've seen
24 any agreed order.

25 MR. McFARLAND: No.

1 THE COURT: I've read a lot.

2 MR. McFARLAND: That has not been presented.

3 THE COURT: I know what I've read. I know the
4 pieces of paper I've read, but I haven't seen any agreed
5 order that you're referring to. Of course, I'll be glad to
6 look at it and listen to your argument on it.

7 MR. McFARLAND: Would it be helpful maybe Your
8 Honor just take a short five-minute break?

9 THE COURT: We will, but let me go through my
10 initial questions, trying to let you know everything on my
11 mind so that you can respond and maybe then when you give me
12 the order, you can explain where it's covered in the order.

13 I found it. It's Section 8.11 where the APA is to
14 be governed by New York law and any disputes related to it
15 are to be resolved in a New York state or federal court.

16 MR. McFARLAND: That would be for the APA, Your
17 Honor, recognizing that the APA was the negotiated agreement
18 between the stalking horse purchaser and Premier Exhibitions
19 while Premier was in Chapter 11 bankruptcy proceedings and
20 for ultimate review and approval of the sale by the
21 bankruptcy court.

22 THE COURT: How did that mesh with the bankruptcy
23 court retaining exclusive jurisdiction to interpret, endorse
24 and implement, as well as adjudicate disputes related to the
25 sale, order and the APA? In other words, that's my

1 confusion there. In one place you're saying that New York
2 law and New York courts, and in another you're saying the
3 bankruptcy court. That's under the sale order.

4 MR. McFARLAND: Right.

5 THE COURT: The sale order says that. So who is
6 going to adjudicate the disputes under the APA? I can't
7 imagine there will be none, given the intricacy of this
8 agreement.

9 MR. McFARLAND: Well, I think it depends on when
10 the dispute arises, Your Honor. If there is a transaction
11 that closes and PAHL becomes the purchaser in the new
12 entity, then that means that the bankruptcy court, the
13 proceedings would be done in the bankruptcy court; they are
14 going to end.

15 So that's why I think the APA is providing for in
16 the future what would happen. I read this as this is a
17 choice of law question that the parties agree that would be
18 governed by the New York law, future disputes.

19 THE COURT: The future disputes would be governed
20 but not just a choice of law. It's also a choice of forum.
21 Choice of law is deciding what law. Forum is deciding what
22 court.

23 Let me just mention my last concern. You came
24 before this Court a couple of times, and you put the rush on
25 this because you kept saying the employees need to be paid,

1 the employees need to be paid, and in the Asset Purchase
2 Agreement you say that R.M.S.T. hasn't had any employees
3 since 2015. I'm quite confused about that. It's in Section
4 3.11 under labor and employee benefits, and it represents
5 that R.M.S.T. hasn't had any employees since 2015. You all
6 were coming in here telling me that your employees weren't
7 going to get paid and you had all of these employee
8 problems.

9 MR. McFARLAND: Your Honor, remember, now, the
10 parent corporation is Premier Exhibitions, and Premier has
11 altogether about 150 employees. As it's structured now, I
12 believe the R.M.S.T. folks who work on the artifacts, for
13 example, Ms. Klingelhofer, she is technically a Premier
14 employee. But Premier is in bankruptcy as well, Your Honor.
15 The parent corporation is in the same financial
16 circumstances as R.M.S.T.

17 THE COURT: So you all are like one entity?

18 MR. McFARLAND: They are distinct entities, Your
19 Honor. It's just that Ms. Klingelhofer is technically
20 employed by -- her check comes from Premier Exhibitions,
21 Inc.

22 THE COURT: But you've been in here as an R.M.S.T.
23 attorney, and it's been represented to me on numerous
24 occasions that this thing had to go through and this Court
25 had to move mountains to get it through because there were

1 all these employees that weren't going to be paid as of the
2 end of the year. Then you make the representations in the
3 Asset Purchase Agreement that you haven't had any employees
4 since 2015.

5 MR. McFARLAND: Well, the representation, Your
6 Honor, was for all the debtors, in other words, the debtors'
7 employees have -- the debtors, plural, have financial
8 issues. The employees of the debtors are obviously affected
9 by the company's -- and by that I'm using the plural
10 again -- financial situation.

11 So how they technically get their paycheck, but the
12 point that's always been made to this Court, or at least was
13 always intend to be made, is the debtors', plural, financial
14 situation is dire. There is no two doubts about it. That's
15 why there is -- and we appreciate the Court making itself
16 available and hearing this matter and the prior matters
17 because of the urgency.

18 THE COURT: I don't have any objection to making
19 the Court or myself available, but, as I say, you can't let
20 an emergency that's not -- you're trying to make somebody
21 else's emergency -- it's that old maxim of you're trying to
22 make your emergency my emergency, and this is a serious
23 situation. This Court has been involved in this case for
24 decades and supervising and protecting the artifacts.

25 To then say you've got to approve this -- I hold up

1 the stack, and we are still filing -- I'm looking, this is
2 the submission from October 22nd, and you've got to get this
3 done by October 31. Frankly, I know that it's reverse where
4 somebody says to the Court, you're not being fair, I say to
5 you all, you're not being fair to the Court, and the
6 importance, in my opinion, is of the preservation of the
7 Titanic. It's not something that necessarily can be done in
8 a few days. Look at how long your bankruptcy went on. It's
9 taken all of this time to get a bankruptcy order. These are
10 voluminous orders. They have the force of law.

11 The Court has to be mindful of its duty to protect,
12 as it's referred to it many times, as the graveyard in the
13 sea. It's very important. I'm just saying that you're
14 asking a lot of the Court in less than a week when the case
15 has been pending for 30 years.

16 MR. McFARLAND: Sure. We appreciate, Your Honor,
17 that there has been a lot submitted. We filed the motion
18 for approval back in June.

19 THE COURT: I understand that.

20 MR. McFARLAND: And provided the APA at that time.
21 Then this Court has had the status hearings, and we've
22 apprised the Court of what's been going on in the bankruptcy
23 court. What we wanted to do, Your Honor, is come to this
24 Court as soon as possible once the bankruptcy court issued
25 its ruling of last week. So we appreciate the Court making

1 itself available today.

2 THE COURT: I'm not criticizing you at all. You
3 have sent me things as quickly as you've gotten them. I'm
4 not saying there is a delay on anyone's part because you all
5 have been very efficient in getting things to the Court.

6 It's just that the expectation now that something
7 has to be done in a few days. It's the 25th of October, and
8 the materials were still coming in this morning. So all I'm
9 saying is that the expectation that something of this
10 magnitude can be done in under a week is expecting a lot.
11 You all have exercised your due diligence in terms of
12 timeliness in getting things to the Court. There is no
13 criticism or fault there.

14 I'm just trying to say you're putting a tremendous
15 burden on the Court to do something in under a week of this
16 magnitude and importance not only for today but for
17 posterity. I'm not trying to be dramatic, but that's the
18 way I feel about it.

19 MR. McFARLAND: We appreciate that, Your Honor.
20 That's why I do want to answer whatever questions the Court
21 has, and even if we need to submit something further because
22 the overall message -- and I think the government will agree
23 with me -- is that if the Court approves the APA and the
24 stock sale of R.M.S.T. and then the transaction closes, as
25 to this Court and R.M.S.T.'s operations, it's going to

1 remain business as usual. We are going to be filing
2 periodic reports. We are going to be updating the Court.
3 We have received some recommendations from NOAA that we'll
4 certainly talk with them post-closing. I appreciate what
5 the Court is saying. That is why I say I really do want to
6 assuage the Court's concerns because we view this -- this is
7 a positive situation. A purchaser is coming in with much,
8 much more significant financial resources so that the
9 company should not be facing quite the circumstances as it
10 is now.

11 It comes out of bankruptcy after, admittedly, long
12 period, and I'm not a bankruptcy attorney, as Your Honor
13 knows, but even I know two years, it has been a difficult
14 time.

15 THE COURT: It's a major case, and the bankruptcy
16 court needed to spend that kind of time on it. Again, I'm
17 not faulting the bankruptcy court because we have
18 bankruptcies in the court that go on for quite a few years
19 when you're involved in a case of this magnitude and
20 importance.

21 MR. McFARLAND: Right. My point was I think the
22 bankruptcy court has done an excellent job. It took awhile
23 to get to a situation, and that is now the sale, that was
24 acceptable, that would be accepted by the bankruptcy court.
25 And let me say this, the order that the bankruptcy court

1 entered, obviously, carries the bankruptcy court's approval
2 but also carries the approval of all of the major creditors,
3 of the debtor's landlord, and of a majority of the
4 shareholders. That's very important.

5 So when we come to this Court, and I appreciate, we
6 are asking this Court to review quite a bit and to give us
7 full consideration, but we are coming in here with a
8 situation where six months ago or less, we didn't know what
9 was going to happen with R.M.S.T.

10 Now we have a bankruptcy court order and a plan
11 going forward, assuming that the transaction closes, and we
12 obviously need this Court's blessing as to certain elements
13 of that.

14 THE COURT: Well, why don't we take a 15-minute
15 recess. Then you can actually argue and not have to just
16 respond to the Court's inquiries and present your order, and
17 then, of course, I'll hear from the United States, and we
18 will continue.

19 MR. McFARLAND: Thank you, Your Honor.

20 (Recess from 2:07 p.m. to 2:25 p.m.)

21 THE COURT: Mr. McFarland.

22 MR. McFARLAND: Thank you, Your Honor. Your Honor,
23 I did want to say, when we were talking about the urgency,
24 and this Court will recall when we were here in September
25 and there was evidence presented about the debtors and I'm,

1 again, using the plural, financial situation, that,
2 essentially, by the end of the year they will be out of
3 cash. So the urgency is, if this transaction is going to
4 close, to get it done so that the purchaser can come in and
5 take over and run the operations, pay the employees, keep
6 the business, and in that sense what the bankruptcy court
7 has approved is the one plan that was ever presented that
8 provides to continue the company or companies, including
9 R.M.S.T. as a going concern.

10 So we certainly appreciate the Court's having to
11 dive in and look at a lot of things on short notice, but
12 there is an urgency. If this transaction doesn't go
13 through, the next thing that is going to happen is a Chapter
14 7 liquidation.

15 THE COURT: Let me ask you, quick question.
16 R.M.S.T. filed the bankruptcy, right?

17 MR. McFARLAND: Well, the debtors, plural, which
18 includes Premier and its other subsidiary, PEM. So there
19 were at least three entities. I think I may be short
20 counting, but there is at least three or four entities that
21 filed the bankruptcy. It's not just R.M.S.T. The point
22 there is Premier is the parent company. There are separate
23 corporation entities with the corporate formalities, et
24 cetera, but they are all in the bankruptcy.

25 Your Honor, perhaps, what might be good is to see

1 if I can and help address the Court's concerns, we have
2 spent a lot of time with NOAA, in respect, and we appreciate
3 NOAA and the government's efforts. We had a lot of
4 communications. They sent us questions, which we endeavored
5 to answer as fully as possible. Then they sent some
6 supplemental questions, which we've also answered. We
7 provided the Court copies of our responses to NOAA's
8 questions.

9 We then have gotten together and worked on a draft
10 order for the Court that presents, summarizes the situation,
11 but also, and certainly we will go through them and make
12 them on the record, the commitments that my client R.M.S.T.
13 is willing to make with respect to, and will make with
14 respect to this transaction.

15 So if I may, Your Honor, what may be helpful is to
16 hand up a draft order, and we've even -- recognizing one of
17 the Court's stated concerns about the APA, if the Court will
18 apologize, the handwritten aspect into it. We will
19 certainly work on and modify this further. But I thought it
20 would be very helpful for the Court to see the framework
21 that we believe this transaction presents consistent with
22 our efforts with the government to reach a solution that we
23 can present to the Court that will satisfy the Court's
24 needs. I've got a copy for Your Honor's law clerk, too.
25 Thank you, Your Honor.

1 So what we've got, Your Honor, and I'll give the
2 Court time to follow along, beginning paragraphs are
3 essentially a summary of where the proceedings are. We note
4 that, and, of course, much of this evidentiary-wise is
5 reflected in the responses that we provided to the
6 government and NOAA that have been submitted to the Court.
7 But in Paragraph 3 we note the sale is contemplated by the
8 APA, is not intended to change the corporate identity of the
9 trustee or the management, conservation, and curation of the
10 STAC.

11 THE COURT: Well, how is PAHL, Premier Acquisition
12 Holdings, LLC, different from Premier Exhibitions, Inc., and
13 Premier Exhibition Management, LLC, and Premier Exhibitions
14 International, LLC and all the different parties that were
15 parties to the bankruptcy proceedings?

16 MR. McFARLAND: So Premier Acquisition Holdings,
17 LLC, is the new entity. That is the purchasing entity.
18 That is composed of three members, Apollo, Alta and
19 PacBridge, and that's a brand-new entity, Your Honor, with
20 different members, different directors, officers, et cetera.

21 There is no overlap between Premier Exhibitions,
22 Inc., and its subsidiaries, PEM, et cetera, that are
23 selling -- those entities selling their assets to the
24 stalking horse purchaser, PALH. Different entity. That's
25 why I say this was a very negotiated transaction in which my

1 client -- and there I will say clients, plural, Premier
2 Exhibitions because we represent them in capacities,
3 negotiated with PAHL. PAHL happens to have a name that uses
4 the Premier name there, but it's a wholly distinct entity
5 that is going to be a Delaware entity with a principal place
6 of business in Atlanta but different members in that LLC,
7 different, et cetera.

8 So we continue, Your Honor. We set forth the
9 proceedings, including the government's role as amicus, and
10 it's filed its report and recommendation, which I don't know
11 if the Court's had a chance to read the entire, but it does
12 recommend the approval of the transaction.

13 Then here is where Your Honor, I think we want to
14 go through it, and let me say I'm turning now to Paragraph
15 6. This was drafted, Your Honor, before we came in and the
16 Court expressed certain of the concerns it has. But it was
17 drafted then to try and make sure we addressed the Court's
18 concerns and its role in this transaction.

19 So let me say, in addition to having the order
20 entered, we state on the record, R.M.S.T. will continue to
21 "consent to the *in personam* jurisdiction of this Court for
22 purposes of its ongoing compliance with the covenants and
23 conditions." We will "commit to continue to abide by the
24 covenants and conditions."

25 Of course, there has never been any assertion that

1 we haven't. We will "commit to providing the Court with
2 copies of all" -- this is (c), "replacement or amended
3 intra-company agreements that pertain to the care,
4 preservation, conservation or curation of the artifacts."
5 In that respect, as we've provided to the Court previously
6 but also provided to the government very recently, we were
7 providing them the intra-company agreements that are in
8 place and going forward.

9 (d), we "commit to promptly advise the Court of any
10 change or alteration to the composition and makeup of both
11 R.M.S.T.'s and PAHL's board of directors." So just as we've
12 done, Your Honor knows in the periodic reports where we
13 advise who is on the board and the management, that we will
14 do the same and keep the Court informed as to R.M.S.T. and
15 PAHL.

16 NOAA and the government want to know that the same
17 fine collection staff that is in place now, whether those
18 folks are going to still be there and who is going to be
19 involved in the permanent collection, so we will advise the
20 Court of that, and as well as in changes in senior
21 management as it pertains to the permanent exhibitions, the
22 permanent exhibitions being the one of the Luxor Hotel, and
23 I believe in New York -- I'm sorry, Orlando. We will
24 continue to file periodic reports at regular intervals as
25 directed by the Court.

1 The Court knows we've been doing that, in fact,
2 kind of inundating the Court, but there were significant
3 developments that we needed to make the Court aware of. I
4 think here, Your Honor, this is (g), very important to the
5 Court's concerns that it had with respect to certain
6 language of the APA. So my client will "commit that it will
7 provide the Court at least 60 days' notice" as to "any
8 action that results in the Titanic collections no longer
9 being maintained together as an integral whole. And any
10 action which pledges or otherwise uses in any way any
11 artifacts as security or collateral for any purposes."

12 We also "commit to provide the Court advanced
13 notice," obviously, "of any expeditions to the wreck site"
14 or pass to salvor. Then, Your Honor, this is where the --
15 it was written in in hand, and I hope the Court can read the
16 handwriting, but to address certain of the Court's concerns
17 today, we would agree and state in the order,
18 "notwithstanding anything in the APA to the contrary, we
19 shall not amend the APA in any manner contrary to these
20 confirmations."

21 So we state these conditions, Your Honor, because
22 to say we recognize this Court's role. R.M.S.T., as always,
23 recognized this Court's role, its longstanding history in
24 this proceedings, and that is not in any way intended to
25 change.

1 THE COURT: Mr. McFarland, what will be PAHL's
2 relationship to R.M.S.T.?

3 MR. McFARLAND: It will be a parent entity, Your
4 Honor, that provides certain funding overseas, R.M.S.T.'s
5 operations, but they're distinct entities.

6 THE COURT: What keeps the parent company from
7 dissolving this subsidiary?

8 MR. McFARLAND: Dissolution, Your Honor, would have
9 to be by the R.M.S.T. board of directors, would have to be
10 voted on by the R.M.S.T. board of directors, and there are
11 separate boards.

12 THE COURT: You are saying the parent company can't
13 dissolve the subsidiary company or merge it or do something
14 to that effect with it?

15 MR. McFARLAND: Well, I think under those
16 circumstances, Your Honor, the covenants and conditions
17 would be implicated and we would be before this Court.
18 Number one, we could be informing the Court of that; and,
19 number two, we would be before the Court.

20 THE COURT: PAHL isn't before the Court. Why
21 haven't they made an appearance before me?

22 MR. McFARLAND: R.M.S.T. is, Your Honor. The
23 artifacts are owned by R.M.S.T., and R.M.S.T. is the party
24 to the covenants and conditions, as it's always been.
25 Premier Exhibitions is not a party to the covenants and

1 conditions and wasn't even in existence at the time that
2 these salvage proceedings started and R.M.S.T. was granted
3 salvor in possession. So there is a substitution, if you
4 will, of PAHL for Premier Exhibitions, but there's not a
5 change in this Court's role or in the operations of R.M.S.T.
6 in how things are going to be in this.

7 THE COURT: At the moment.

8 MR. McFARLAND: But if there were a change such as
9 Your Honor's saying, that would come to the Court's
10 attention.

11 THE COURT: What responsibility does PAHL have to
12 this Court?

13 MR. McFARLAND: I think, Your Honor, the key is --
14 and I'm not really not trying -- I think the key is what is
15 R.M.S.T.'s responsibility given that its only assets are the
16 artifact collection and, to a certain extent, the exhibitry.
17 So, I mean, the party that this Court wants to make sure it
18 has jurisdiction over, it does, and that's going to remain.

19 If there is an issue, should there be an issue in
20 the future with curation, conservation, care, this Court has
21 the party it needs to bring before it and say what's going
22 on here, Mr. McFarland? We are hearing that you're not
23 caring for the artifacts, or we are hearing that this
24 Court -- you've got the party.

25 THE COURT: But if PAHL owns 100 percent of your

1 stock, they control your company. I'm not a sophisticated
2 corporate business lawyer. I did some business law in my
3 day, but it's kind of hornbook law when you read that
4 somebody has bought -- you keep talking about stock and
5 assets, but R.M.S.T. is selling 100 percent of its stock to
6 PAHL, which means PAHL owns it.

7 MR. McFARLAND: PAHL will own the stock of the
8 company, that's correct. It is the parent corporation.

9 THE COURT: They make the decisions. Come on,
10 Mr. McFarland. You know good and well that you sell 100
11 percent of your stock to an entity, that entity controls
12 that corporate company.

13 MR. McFARLAND: It certainly makes it a subsidiary,
14 and I agree, but we also must recognize there are
15 distinctions.

16 THE COURT: They are 100 percent stockholder. If I
17 own 100 percent of the company, I control it. If you own
18 100 percent of the stock in a company, you own the company,
19 you control the company, and PAHL is not a party in this
20 proceeding. It has not made an appearance in this court.
21 You're asking this Court to approve a sale of the party
22 before this Court, which is R.M.S.T., to an entity that is
23 not before this Court.

24 You can't get around that I'm authorizing the sale
25 of 100 percent of R.M.S.T.'s stock. So call it a stock

1 purchase if that's what you want to do. It's a stock
2 purchase, but a hundred percent of the stock means you're
3 the owner of the company, and you can do what you want with
4 that company. You can disband it. You can expand it. You
5 own the stock. You vote. You make the decisions for the
6 company.

7 MR. McFARLAND: With respect to the shareholders,
8 that's correct, Your Honor. But the key is that the
9 covenants and conditions, and this Court's jurisdiction as
10 to the artifacts, remain in place. That doesn't change.

11 THE COURT: At the moment they remain in place, but
12 R.M.S.T. is the entity before this Court, not PAHL.
13 R.M.S.T. is asking this Court to approve a 100 percent sale
14 of all of their stock to PAHL. That's the bottom line.

15 MR. McFARLAND: Right.

16 THE COURT: PAHL isn't before this Court.

17 MR. McFARLAND: That stock sale will not change
18 this Court's authority over the collection, the American
19 collection, and the covenants and conditions and the salvage
20 rights. That doesn't change. So if there were a
21 dissolution, they can't do something with the artifacts
22 without this Court's approval.

23 THE COURT: You just finished telling me that PAHL
24 didn't sign on to the covenants and conditions. The only
25 party advised is R.M.S.T. So if R.M.S.T. is no more, how is

1 there a bound party? How can you buy an entity that no
2 longer exists?

3 MR. McFARLAND: No one is going to enter into any
4 kind of transaction or with those artifacts knowing that the
5 covenants and conditions and this Court's authority over the
6 artifact, the American collection of the artifacts, is still
7 in place, Your Honor. It's really not different from what
8 the situation is now with Premier. Premier Exhibitions
9 didn't come into being until, I think it's 2003 or 2004, and
10 it's not a party to the covenants and conditions, and it's
11 not a party to these proceedings. It's a parent
12 corporation.

13 THE COURT: But it doesn't have 100 percent of the
14 stock.

15 MR. McFARLAND: It's got the ownership rights, Your
16 Honor.

17 THE COURT: Those were things that didn't make the
18 Court happy at the time. We won't go back through all the
19 years of litigation as to things that have occurred and have
20 not occurred in this case, and the Court's need to bring in
21 the United States as amicus because the Court, back with
22 Judge Clarke, it was the Court *vis-à-vis* you, not you,
23 Mr. McFarland, but R.M.S. Titanic.

24 There was no advocate for the citizens of the
25 United States and their interest and the other citizens of

1 other countries and their interests, and the upholding of
2 the salvage laws. I don't want to go back through this case
3 because it has been here for a long time, and it's a lot
4 that occurred and going back to Mr. Tulloch and all of that.
5 I have the whole history. But I'm concerned when I sign an
6 order that approves a hundred percent of your stock to
7 Premier Acquisitions Holdings, LLC, which is an entity that
8 is not before this Court, and they completely own and
9 control you.

10 MR. MCFARLAND: But that really is no different
11 from the current situation, Your Honor, with Premier. Right
12 now what we are doing is we are substituting a new purchaser
13 for Premier Exhibitions, who is in bankruptcy, who had to
14 file Chapter 11. We are substituting a new purchaser.
15 Otherwise, they are the same. It's the same situation
16 except it's a better situation that we are bringing in a new
17 parent entity that has capital and has certain abilities and
18 can go forward.

19 We are not changing this Court's role or this
20 Court's oversight. This Court will have the same
21 relationship with R.M.S.T. that it's always had, and really,
22 in a sense, the same relationship with Premier Exhibitions
23 that it's had with PAHL.

24 THE COURT: Is there anything else you want to tell
25 me about the order?

1 MR. McFARLAND: No, I don't think as to the order,
2 Your Honor.

3 THE COURT: I have a couple of questions about this
4 Asset Purchase Agreement. I note that R.M.S. Titanic, Inc.,
5 is solely for the purposes of Article III, Article V,
6 Article VII and Article VIII. So tell me why that was
7 carved out and go through each of those articles with the
8 Court, please.

9 MR. McFARLAND: So, Your Honor, I turn to, you said
10 Article III, correct?

11 THE COURT: Yes. It says on the front of the Asset
12 Purchase Agreement, "By and between," and it specifically
13 names different entities. Then it says, "R.M.S. Titanic,
14 Inc. (solely for purposes of," and it gives "Article III, V,
15 VII and VIII)."

16 MR. McFARLAND: That's consistent with the way the
17 transaction is structured, Your Honor, again, that this is
18 what is being acquired of R.M.S. Titanic, is its stock, not
19 its assets so that those assets, i.e., the artifacts and the
20 exhibitry, will remain under the R.M.S. Titanic corporate
21 entity and remain under the covenants and conditions. There
22 is not a change in trustee.

23 This transaction was set up to address what I think
24 the Court is saying, in large part, to keep it that way so
25 that R.M.S. Titanic, Inc., the entity, that there is no

1 question this Court has *in personam* jurisdiction over,
2 remains the entity, that is, A, ownership and control,
3 curation of the artifacts; and, B, remains before this
4 Court.

5 THE COURT: I just didn't understand why it was
6 certain articles.

7 MR. McFARLAND: I think it's where they're trying
8 to make sure that there are certain articles or provisions
9 that are going to apply to R.M.S.T., and I think that's why
10 they're trying to define those.

11 THE COURT: It says, "Solely for purposes." So
12 that tells me that it's excluding R.M.S. Titanic, Inc., from
13 the other articles. It says that you're in here solely for
14 purposes of those articles, and I didn't know why, if you
15 weren't party to the whole agreement, maybe somebody else on
16 the team can explain it to me at some point when they have
17 an opportunity to talk.

18 I note that on the front of the agreement that it
19 says "solely for purposes." So to me, as a judge
20 interpreting that, if I were called upon to do it, I would
21 say that they have entered this agreement, and then only
22 portions of this agreement that apply to R.M.S. Titanic,
23 Inc., would be III, V, VII and VIII.

24 MR. McFARLAND: I think that's intended to be
25 consistent with what the nature of the transaction is so

1 that we are not, given that it's a stock sale, as to
2 R.M.S.T.

3 THE COURT: Mr. Wainger, are you ready to address
4 the Court?

5 MR. WAINGER: If it please, Your Honor. Thank you
6 for the opportunity, Judge. What I'd like to do is to try
7 to simplify this for Your Honor. There is, obviously, a lot
8 to this. I think it's important to understand the corporate
9 structure of Premier. So you have Premier Exhibitions,
10 which is just a holding company, and it has several
11 subsidiaries, including PEM, which is its operating entity,
12 and R.M.S.T. R.M.S.T. is a bucket in and of itself, and the
13 only thing that R.M.S.T. has is the artifacts, the salvage
14 rights, and what we call the IP associated with the
15 artifacts; the archives, the photographs, the digital and
16 video archive. That is all it has, okay, and it doesn't, at
17 this stage, operate very much.

18 What it does is it licenses its rights to PEM, the
19 operating company, and in some respects to PRXI so that they
20 can operate these entities. Right. So we are in
21 bankruptcy, and we are trying to structure a deal with the
22 stalking horse purchaser, PAHL, Premier Acquisition
23 Holdings, that will allow for the transfer of assets but
24 maintains this Court's jurisdiction over the artifacts.

25 So what we agreed to do was for PAHL to acquire all

1 Premier's and PEM's other assets but just the stock of this
2 company. That's all we are trying to accomplish, Your
3 Honor, is make it very, very simple. The questions are
4 numerous, Your Honor, as to why this appears to be
5 complicated. It was a massive undertaking for the stalking
6 horse purchaser and all of the debtors to find an exit out
7 of the bankruptcy, and these are the only folks that
8 presented that opportunity to provide that exit.

9 So the APA was a massive undertaking, but they came
10 to me and Mr. McFarland and said, how do we simplify this
11 for Judge Smith so that Judge Smith understands that nothing
12 changes about R.M.S.T.? The relationship between Premier
13 and R.M.S.T. is no different than the relationship that is
14 to be between PAHL and R.M.S.T. R.M.S.T. is a wholly-owned
15 subsidiary of Premier.

16 I remember being in here with Your Honor in 2004
17 talking about whether this Court does have or should have
18 jurisdiction over Premier Exhibitions. We went back and
19 forth, and what we agreed to was, because of the separate
20 corporate formalities, R.M.S.T. was the only part to this
21 action, and this Court has complete and utter control over
22 the salvage rights and over the artifacts by having complete
23 control over R.M.S.T.

24 Nothing changes now except PAHL is the different
25 parent company of R.M.S.T., and we structured it this way on

1 purpose. Nothing changes about the operation of R.M.S.T. or
2 about its relationship with its parent company. Just as
3 this Court has no jurisdiction over Premier, this Court
4 should have no jurisdiction over PAHL because it's
5 unnecessary. Anything happens with these artifacts,
6 R.M.S.T., the company that Mr. McFarland and I represent, we
7 are back here, and the same way we have been for 15 years.
8 Nothing changes except we are not struggling with an
9 unfunded company. We now have folks that have stepped up
10 and have made it their priority to take on these historical
11 assets and build a broader company around it with greater
12 resources.

13 That's the only thing that changes, Judge, is that
14 there is a different parent company. So why isn't PAHL here
15 submitting to the *in personam* jurisdiction of the Court?
16 It's not appropriate under corporate formalities. It's not
17 necessary because this Court has a hundred percent control
18 over these assets, period. That's why PAHL hasn't come
19 forward. It's not necessary. It's not appropriate, and
20 that's the critical issue. That's an issue that we have
21 talked about with NOAA over and over again.

22 That's why we were certain, when we negotiated this
23 draft order with NOAA, to be sure that this Court -- that
24 there was no space, there is no open space for this company
25 to try to circumvent these Court's orders. That's the goal.

1 That was the goal when we drafted this APA, when we carved
2 out, when we converted it from a complete asset sale to a
3 stock sale of R.M.S.T. That was the goal here, Judge; keep
4 it simple and nothing more. Don't change anything. Okay.

5 So the reason we made it as a stock sale was
6 because we wanted to simplify this for Your Honor. We
7 didn't want this Court to have to analyze the APA in the
8 detail that the Court is doing when we felt that that was
9 happening in Florida. We wanted to simplify it, and we
10 decided -- and NOAA now agrees with us in their report and
11 recommendation -- that under Section VI of the covenants and
12 conditions, this Court's formal approval, as required by the
13 covenants and conditions, distinguished from as required by
14 the Asset Purchase Agreement, is not even necessary.

15 NOAA agrees with us there, and that's because under
16 Section VI(E) -- well, it's under Section VI(A) and (E),
17 there is no Court approval necessary.

18 THE COURT: What page are you on?

19 MR. WAINGER: Page 13 of the covenants and
20 conditions, Your Honor. They didn't agree to it. We took
21 it out of the order, but it is in the report and
22 recommendation, I thought? No. Be that as it may, it
23 certainly is my position that the Court approval is not
24 necessary under Section VI because "procedures outlined in
25 this section...do not apply, however, in situations where

1 the corporate identity of the trustee is changed or altered
2 by sale, purchase, merger, acquisition, or similar
3 transaction, the form and purpose of which does not
4 effectuate a change in the management, conservation and
5 curation of the STAC."

6 So when the acquisition of R.M.S.T. is planned, we
7 took great care to make sure that the stalking horse
8 purchaser doesn't change a thing about the management,
9 conservation, and curation of the STAC in any sort of
10 negative way.

11 We have a lot of expectations to apply more
12 resources and do good things, but so what do I mean by that?
13 Ms. Klingelhofer's staff all remains the same. The
14 artifacts all remain in the same place. The policies and
15 procedures and archives, nothing changes, right.

16 With respect to the salvage rights, we continue to
17 keep Mr. Nargeolet in charge and Mr. Gallo in charge of
18 future expeditions so that there is continuity, a hundred
19 percent continuity between that R.M.S.T. and the future
20 R.M.S.T. That's the way this was designed.

21 These people have taken extraordinary care to make
22 this as easy on Your Honor as possible so that Mr. McFarland
23 and I could come in here and say, and NOAA could look at
24 tons and tons of diligence responses and come to the
25 conclusion that it did to recommend this transaction.

1 This is not a game of -- what do they call it --
2 it's not a shell game. This is an opportunity for Your
3 Honor, for this collection to be in much better hands in
4 terms of resources with the same safeguards that you have
5 built in place from day one. This company, the stalking
6 horse purchaser, should be embraced because they have
7 stepped up with the money, and they're the only entity to
8 step up with the money to save these artifacts; and, B, from
9 day one, as evidenced by the Asset Purchase Agreement, to
10 say we want to do everything by the book in conjunction with
11 the covenants and conditions. That was never a controversy,
12 and that's why we laid it out the way we did.

13 So that, I think, is the big picture, Your Honor.
14 You asked a bunch of specific questions, is this an arm's
15 length transaction? Well, as Mr. McFarland pointed out in
16 the order, Judge Glenn finds it's an arm's length
17 transaction, and he found that in the order after we had
18 various entities with their own agendas trying to challenge
19 that very issue without any real proof. So Judge Glenn took
20 care of this, and it absolutely is an arm's length
21 transaction.

22 There is extensive testimony, by the way, Your
23 Honor, on that very issue in the transcript we presented to
24 Your Honor. I've already explained how and why PAHL did not
25 come in here to submit itself to the jurisdiction of the

1 Court and why that is not necessary. We've talked about how
2 this is a stock sale where everything else is an asset sale.

3 This is not, Your Honor, an endeavor to remove
4 jurisdiction of this Court, which Your Honor was concerned
5 about in the question. This is a commitment, as we say in
6 the order, to continue to abide by the covenants and
7 conditions and to the *in personam* jurisdiction of this
8 Court. We have to understand right now, PAHL is merely an
9 acquisition vehicle. It's a shell vehicle right now to
10 acquire the assets of PEM, taking it out of bankruptcy, and
11 acquire R.M.S.T.

12 The managers of PAHL have employees who will be, in
13 fact, the board of directors, the initial board of directors
14 of R.M.S.T. So the reality is, Judge, there is no way for
15 any of these players to get around this Court's
16 jurisdiction, and that was never the intention. I would
17 hate to represent R.M.S.T. and come in under those
18 circumstances before Your Honor, having been a part of this
19 since 2001.

20 THE COURT: Wouldn't you just say I'm just an
21 attorney, there is nothing I could do? Nothing I can do.
22 I'm the attorney. I did my best, because I could, with
23 advocacy, and I didn't have any control over what they did.

24 MR. WAINGER: If I say that, that's great, but I
25 wouldn't want to be here saying that. Let me promise Your

1 Honor that.

2 THE COURT: What could the Court do? Nothing.

3 MR. WAINGER: The Court is in the same position
4 after this transaction that it's in right now.

5 THE COURT: Well, I'm not convinced of that yet.
6 You tell me why do they want to purchase the assets? For
7 what reason?

8 MR. WAINGER: They want to purchase the assets
9 because they believe that they can develop incredible assets
10 into a productive, profitable company.

11 THE COURT: How?

12 MR. WAINGER: By building up the exhibitions, by
13 putting more money into it and developing an operating
14 company that makes money. The prior company has been
15 dragged down because its parent was a public company, and
16 they were distracted with a variety of different operating
17 assets.

18 These folks have access to extraordinary resources
19 and an incredible track record of operation. So they see an
20 opportunity. This was a distressed asset that some valued
21 at 200 million. They saw this as an opportunity to come in.
22 They were the only folks willing to make that commitment, to
23 put their money on the line, and they want to make money off
24 of it, Your Honor.

25 THE COURT: So how are they going to do it? How

1 are you going to make money off of this? Premier
2 Exhibitions for years has tried to exhibit and do, and they
3 haven't been able to make money.

4 MR. WAINGER: I would disagree, Your Honor. The
5 one asset that they made money on was R.M.S. Titanic. It
6 was the other assets that dragged them down, and the burden
7 and costs associated with operating a public company that
8 dragged them down. So now they have key components. They
9 have shed the burden, or they're about to shed the burden of
10 the operating company and the other assets, and they can
11 focus on the core. That exhibition in Vegas makes great
12 money. They want to expand IP rights.

13 THE COURT: The Titanic exhibition in Vegas?

14 MR. WAINGER: In Vegas.

15 THE COURT: Where is the body parts? It was making
16 a lot for a while or so I was told.

17 MR. WAINGER: For a few years, it was, and that has
18 changed dramatically over time, Your Honor.

19 THE COURT: All right.

20 MR. WAINGER: We did talk about the urgency of the
21 necessity of this happening. Your Honor, I have great
22 concerns about the timing of this, Judge. I appreciate that
23 Your Honor is saying right off the bat, this is not an
24 emergency.

25 THE COURT: No, I didn't say it wasn't an

1 emergency.

2 MR. WAINGER: I apologize.

3 THE COURT: It may be an emergency to you and your
4 client. I did not say it wasn't an emergency. I said that
5 sometimes you can't make your emergency someone else's
6 emergency at the expense of doing the right thing, and
7 that's what I've got to be careful of. I'm not saying it's
8 not an emergency. To you it is and to Mr. McFarland and, I
9 guess, to PAHL. That's an emergency not created by this
10 Court. This Court did not create the emergency. The
11 emergency was being created by whatever you all have done.
12 Now I can't let your emergency push the Court into doing
13 something that's not right.

14 MR. WAINGER: I understand precisely what Your
15 Honor is saying now. This Court did not create this, we
16 absolutely agree. In fact, I think I can speak for a number
17 of people in this courtroom, Your Honor has bent over
18 backwards to accommodate our schedule, to schedule this
19 hearing. So we recognize that. I am truly concerned about
20 what happens if there is an order entered beyond a certain
21 time frame or an order is entered that adds on conditions
22 that causes the stalking horse purchaser concern.

23 The APA states that the stalking horse purchaser
24 can terminate it if we don't have the approval of the
25 admiralty court.

1 THE COURT: I know what it says. That is what I
2 asked in the beginning.

3 MR. WAINGER: Right, or there is a Court order that
4 is not sufficient in its discretion. If that were to
5 happen, my concern is we would be doing a disservice to the
6 collection of artifacts themselves because at that point --
7 and Mr. McFarland mentioned it -- we now have a true
8 disaster going on in Florida, and what will also become a
9 liquidation by a trustee.

10 With this order in place, I think the Court has all
11 it needs to control the assets. We save the 120 or 130 some
12 odd jobs, and, truthfully, nothing changes about the
13 operation of R.M.S.T. or about the interactions between
14 R.M.S.T. and this Court and vice versa, or the interactions
15 between R.M.S.T. and NOAA. Nothing changes, and that's by
16 design. We didn't stumble into this.

17 This is hours and hours and hours of drafting and
18 the reflection of the covenants and conditions and Your
19 Honor's prior hearings so that this Court could simply take
20 a look at the order, look at our diligence responses, and
21 say, let's keep it going, let's keep it going with a
22 different parent, and then, as we can talk about now or
23 later, NOAA has some additional oversight suggestions that I
24 think we can all discuss later.

25 That is it in a nutshell, Judge. I appreciate the

1 indulgence. Does the Court have any other questions for me
2 at this time?

3 THE COURT: No, I don't. I'll hear from Mr. Porter
4 now.

5 MR. PORTER: Thank you, Your Honor. I want to
6 start with expressing that I think, as the Court knows, the
7 Court's concern about the artifacts is NOAA's concern. We
8 have always had the concerns about the proper management and
9 care and what happens with them. We have the flip side
10 concern, however, of what happens in the breach if there is
11 not an ongoing operation.

12 What we would, perhaps, desire ultimately in a
13 longer term situation or a permanent situation, for the
14 artifact collections permanently together, undoubtedly
15 permanently together, in a particular location, is something
16 that NOAA would love to see.

17 We have, however, a transaction before us -- we
18 have just one transaction before us to address that we have
19 tried to address diligently in our report. I would say a
20 couple of things on that. We first began receiving
21 information materials less than two weeks ago. The last of
22 the materials we received on Monday.

23 I'm not offering that as an excuse. I'm just
24 suggesting that we have all been on a short time frame, and
25 we have worked as hard as we can over the last several weeks

1 to try to produce for the Court our honest assessment of
2 this situation, our honest assessment of what is presented,
3 and how to address it.

4 The way that we have done that in our
5 recommendation is to include contingencies. We have
6 separated them into two parts. The recommendations we can
7 address later that we don't suggest are contingencies for
8 any approval but certain things that we think are
9 contingencies that should be required for any approval if
10 the Court is so inclined to go that route with our
11 recommendation.

12 These contingencies attempt to address, we think, a
13 number of things that the Court has raised today. We
14 certainly, as Ms. Roller and I have listened to the
15 exchange over the last hour or so, Your Honor certainly
16 brought some very important considerations. We, too, are
17 concerned about that situation of the relationship with PAHL
18 and R.M.S.T., and as I think you can see in our report, as
19 well as the questions that we asked, we were very concerned
20 to ask about questions, what happens with these
21 intra-company agreements, what happens with these
22 relationships between the two?

23 It really informed the basis of why in our initial
24 recommendation to the Court that we suggest that R.M.S.T.
25 and PAHL both be bound by certain conditions. You will see

1 in the order that Mr. McFarland discussed, I just want it to
2 be clear that we have had ongoing conversations, but the
3 first time we discussed this order was this morning, and we
4 discussed some of the language. We discussed the inclusion
5 of PAHL in the recommendations. I certainly appreciate the
6 position that they have articulated that PAHL as a separate
7 legal entity has never been a party to this Court, never
8 been a party in this matter, and is not before the Court.

9 I understand that legal construct, and that is why
10 we discussed some potential edits to the language that took
11 PAHL out. However, there is another part of this, and we
12 indicated when we met this morning -- and it was a
13 productive meeting. I don't want to suggest otherwise.

14 But when we met this morning, we did indicate we
15 would want to hear what the Court's concerns, if any, were.
16 But we also said a few other things about the whole
17 situation with PAHL. Number one, is that we would require
18 that there be a restatement on the record here today
19 consistent with what they term the formal acknowledgement
20 that was in their written response to us that was provided
21 as part of the October 22nd periodic report. That would be
22 the second one. They framed it as a formal acknowledgement,
23 and that acknowledgement essentially was that PAHL
24 acknowledged --

25 THE COURT: Where is it?

1 MR. PORTER: I'm sorry?

2 THE COURT: You talk about they framed, was that
3 this morning?

4 MR. PORTER: That was our conversation this
5 morning.

6 THE COURT: Because I haven't seen any formal
7 order.

8 MR. PORTER: You have not. I just want to clarify
9 the context of the order, that the reason that our
10 recommendation that PAHL is not in there, is for a couple of
11 things: One, is that there would be this formal
12 acknowledgement that they made to us in the response. We,
13 like the Court, would like that formal acknowledgement to
14 the Court.

15 So we wanted a formal acknowledgement to the Court
16 both that they recognize they were on notice to the
17 requirements of the C&Cs, and that their intent as the
18 corporate parent was that R.M.S.T. would continue to be
19 bound by the C&Cs. That would actually be on the first page
20 of that second response that they gave us, that was part of
21 the periodic report.

22 THE COURT: While you are there, there has been a
23 lot of material, as I indicated, coming to the Court. I've
24 got to go through it in the next couple of days. I'm going
25 to put everything on record. You all have been sending

1 transcripts and agreements and everything, and I see nothing
2 there that shouldn't be in the public record. The only
3 reason it's not is because it's been coming into me the last
4 couple of days, and I've been reading it. The status report
5 and everything needs to be part of the record.

6 I think the Asset Purchase Agreement, at least the
7 draft, was part of the initial record, but I'm going to go
8 back and check everything from June. These are records.
9 The bankruptcy transcript will be on record with the
10 bankruptcy court, and the bankruptcy order would be on
11 record with the bankruptcy court. But I also want to be
12 sure that they are on record with this Court, too, and I
13 need to go through.

14 MR. McFARLAND: We have a binder, Your Honor, that
15 I was going to, at the end of the hearing, move those in as
16 actual exhibits. We will present to the Court the same that
17 have been submitted in the last couple of weeks, recognizing
18 that things have been coming in fast and furious.

19 THE COURT: Then we will check it. It's basically
20 just what I was reciting at the beginning of the hearing.
21 No copies went to the clerk, but just came to me. I want to
22 be sure everything is on the public record.

23 MR. PORTER: I understand this binder is the same
24 documents that they have already provided to us starting
25 approximately two weeks ago.

1 THE COURT: A lot is already on a public record.

2 MR. PORTER: That is correct.

3 THE COURT: It's just in Florida, and it's not part
4 of this record. I want to be sure that the transcripts and
5 orders that we are referring to here get into this record
6 also.

7 MR. PORTER: So I mentioned the first aspect of the
8 PAHL situation, which is a restatement on the record.
9 Again, let me back up just a second. This was under the
10 belief that, perhaps, today, although there is a lot of
11 material, that the Court was considering whether to enter an
12 order authorizing the sale. We would want that commitment
13 on the record.

14 THE COURT: I'm not going to enter an order today
15 authorizing the sale. I've got a suggested order with
16 handwritten interlineations in it, and after hearing
17 everything I've heard, you all need to get back together and
18 see if you can present an order.

19 MR. PORTER: I think that would be appropriate.

20 THE COURT: From what you said, you need to go back
21 through the order, and you need to have this restatement
22 from PAHL on the record.

23 MR. PORTER: That's correct. The second part of
24 the PAHL issue was we had asked that we receive, and it be
25 provided to the Court, a separate letter from PAHL, so this

1 would not just be from R.M.S.T.'s attorneys but a separate
2 letter from PAHL to the Court to be provided in the record
3 that acknowledges those same formal acknowledgements plus
4 acknowledging that R.M.S.T. was subject to any order that
5 the Court issued that would approve this transaction.

6 The last thing, and after we left Mr. McFarland's
7 office, we had some further conversations with some of our
8 NOAA personnel that have been involved in this transaction.
9 We felt comfortable enough to remove PAHL from an order at
10 this point, but we would want to revisit the issue later
11 whether PAHL should be, and, of course, this is just our
12 recommendation.

13 The Court can decide PAHL needs to be, but from our
14 perspective, we would want to revisit later because, as Your
15 Honor knows, there were the intra-company agreements between
16 PEM, Premier Exhibition Management, and R.M.S.T. about some
17 of the things that were going on. All of those things, as
18 we've put in our recommendation, our report, all those
19 obligations have been assumed by PAHL.

20 Based on our conversations this morning, we
21 understand that should this transaction be approved and
22 should this transaction go to closing, that there will need
23 to be some arrangements of how those activities, as they
24 relate to the artifacts, are actually undertaken.

25 For example, it may be that R.M.S.T., the ongoing

1 company, takes over all of those activities, and that might
2 be one thing. To the extent that PAHL is retaining
3 authority over some of those activities, it has direct
4 involvement in the artifacts, then that may mean something
5 different about whether the Court wants to require them to
6 be subjecting themselves to the *in personam* jurisdiction and
7 subject to the C&Cs. So that was the issue on PAHL.

8 There is one other thing that I simply want to
9 point out on the order. All of us were trying to work
10 quickly this morning, and I mean by that R.M.S.T. as well as
11 NOAA. There is, in Paragraph 6 of this proposed order that
12 Mr. McFarland presented to you, letter (g), 6(g), I would
13 just point out that in our recommendation, that our
14 recommendation provides that R.M.S.T. and PAHL's commitment,
15 they will provide the Court and NOAA at least 60 days'
16 notice of and seek approval for. So that additional
17 language of "and seek approval for" would be very important
18 from NOAA's perspective to remain in this.

19 The idea, again, with these contingencies is we
20 have a transaction in front of us. This might not be ideal
21 that anybody thinks is the best for the artifacts long term,
22 but it is the transaction we have in front of us, and the
23 vision, the other side, of a potential Chapter 7. We have
24 had a number of conversations with Mr. Troy from the
25 department who has been here before before Your Honor, who

1 has been handling the bankruptcy proceedings down in
2 Florida. It would not be a desirable situation to get
3 there.

4 We have not made our recommendation simply because
5 the consequences would be bad. We do think, given the
6 language of the C&Cs, we do think that the form and purpose
7 of this transaction, with additional protections and
8 conditions that we have provided for and R.M.S.T. has, for
9 the most part agreed to, would not change the current
10 management in a negative way.

11 There is the hope that it gets better, but it would
12 not change it in a negative way. We have added those
13 additional recommendations because, quite frankly, during
14 part of the review, we see areas where there can be
15 improvement, and that is why we've included the additional
16 recommendations. I can either go into those, and I don't
17 think from R.M.S.T.'s standpoint there is an intent to
18 simply say, no, we are not going to do that. They have
19 expressed to us a desire to get past the immediacy of the
20 transaction and, in a sense, let the dust settle and then
21 revisit this with NOAA and the Court to address these
22 additional recommendations that we think are important.

23 We had three of them, and I'll just touch on one of
24 them that I think is the most important and the most
25 critical, is the idea that there needs to be a collections

1 management plan in place for this company that controls how
2 the artifacts are maintained in all these locations,
3 precisely for part of that reason because artifacts are not
4 just in a museum in one place. Artifacts are in a number of
5 locations. That's the business model. We all know that.
6 That's what it is.

7 But because of that, it is particularly important
8 that there be a defined plan, we think. All of that said,
9 Your Honor, I mean, again, I would just reiterate, we have a
10 lot of the concerns the Court has. We have heard your
11 comments about the agreement, the Asset Purchase Agreement,
12 and what consequences.

13 We think that these contingencies do build in some
14 protections because they have the commitments, they would be
15 in, they would specifically be in a court order that would
16 bind them to this. Perfect situation, no, but it is still a
17 situation that, under all the circumstances, we would
18 continue to recommend with those appropriate conditions.

19 THE COURT: You still aren't there yet, as far as
20 I'm concerned, because their representations you just made
21 to the Court, Mr. Porter, indicate that you, Mr. McFarland
22 and Mr. Wainger, at least, need to sit down and talk, and
23 you mentioned a couple of details in the order that aren't
24 there: You've mentioned this PAHL statement on the record.
25 You've mentioned a couple of matters that clearly aren't

1 there that could be there.

2 So at a threshold level, you're not there yet to
3 recommend it, in my opinion, until you have covered these,
4 as you call them, other issues. They may not create a
5 perfect world, but you create at least a better world at the
6 moment. You certainly need to do that. We are not ready to
7 enter an order today, that's clear.

8 You all need to get together and go through these
9 and present, if you can, an order to the Court, and we may
10 need to get back together. From what you've said, it's
11 clear to me that you're not quite there yet.

12 MR. PORTER: I think that's a fair criticism, and
13 actually during the break we were speaking of the need to
14 make some adjustments to the order to address some of the
15 Court's concerns.

16 THE COURT: Let's go to a couple of things in the
17 covenants and conditions, Mr. Porter. First of all, have
18 you assured yourself that the company PAHL is not
19 constituting some kind of overseas entity?

20 MR. PORTER: I'm sorry, Your Honor?

21 THE COURT: On Page 14 of the covenants and
22 conditions, there are special provisions in the event of a
23 transaction with an overseas entity. Have you looked at who
24 are the controlling parties of PAHL and who controls those
25 parties? Because if this is a transaction with an overseas

1 entity, it's not prohibited by the covenants and conditions,
2 but there are certain things that need to be met. I don't
3 know if anyone has looked at that.

4 The Court would have to be assured that this is not
5 an overseas entity, and that if it is in any way, these
6 conditions have been met. That hasn't been presented to the
7 Court yet.

8 MR. PORTER: What we have included in our reports,
9 Your Honor, we've indicated, based on the documents they
10 have provided, that this is a Delaware company, that its
11 business operation will be in Atlanta. We have identified
12 the three owners, the one-third owners each, two of which
13 are based in New York. The third is based in Hong Kong.

14 THE COURT: In terms of these entities, who
15 controls these three entities?

16 MR. PORTER: Wait just a moment, Your Honor.

17 THE COURT: One of the entities is an overseas
18 entity. If it is based in Hong Kong, one of the entities is
19 an overseas entity.

20 MR. PORTER: Mr. McFarland may be able to address
21 this, but PacBridge is based in Hong Kong but he's relating
22 to me it's a --

23 MR. McFARLAND: I don't mean to interrupt.

24 THE COURT: I'm going to finish going through with
25 Mr. Porter, and then you can respond. So that's something

1 that I would like for you to review because the Court is
2 comfortable with its jurisdiction here, but, obviously, not
3 comfortable with trying to exercise overseas jurisdiction,
4 and if it was going to relinquish it, it would be sure that
5 it was with an overseas entity that would respond to the
6 Court.

7 MR. PORTER: Fair enough, Your Honor. We will
8 certainly address that issue.

9 THE COURT: The other half of it is, there is a
10 section here in your covenants and conditions that, and it's
11 also this portion in the annex, "Considerations for any
12 evaluation of whether an entity is a qualified institution."
13 I assume that you have reviewed all of that?

14 MR. PORTER: Your Honor, we have not addressed the
15 issue of whether they continue to be a qualified
16 institution. We are addressing the transaction itself since
17 it is characterized as a stock sale. The representations in
18 the APA and to us and to this Court are that R.M.S.T.
19 continues to operate as a qualified institution. We have
20 indicated that, based on our last site visit, we don't have
21 any indications that it's changed, that they continue to
22 operate appropriately there.

23 We have asked the additional follow-up questions,
24 as you are aware, concerning some of the care at the
25 permanent exhibitions so we can be satisfied that those

1 things are being done appropriately.

2 THE COURT: All right. Then with regard to what
3 you're saying, I'm not saying that I agree or disagree with
4 you. You've basically said, Mr. Porter, this may not be the
5 optimum or the best choice but it's all we have. I guess I
6 never approach the law, and, perhaps, it's one of my
7 thoughts, that anything I do I always want to try to give it
8 my all and the best that I have. For instance, say you or
9 one of your children are going to college, and they have
10 been accepted at a lesser university, and everybody knows
11 it's a lesser university, and you're still waiting to hear
12 from the premier university, no pun intended on Premier, you
13 might not say to that person who has asked for your opinion,
14 whether it be a friend or a spouse or a child or you, let's
15 just settle for the lesser because we don't want to wait for
16 the better.

17 There is nothing in the covenants and conditions or
18 anywhere that says, well, if it's all we have, we have to go
19 with it. I'm not saying that that's not true but there is a
20 provision for bankruptcy in here. There is a bankruptcy
21 provision in these covenants and conditions. It allows the
22 Court to take certain action. If the trustee is bankrupt or
23 insolvent, and that's what has occurred here, the Court may
24 take appropriate action within its jurisdiction to enforce
25 these covenants and conditions.

1 So there are things that can be looked at. I'm not
2 saying that it's necessary at this point, because, again,
3 there is still a lot I have to go through and check. One of
4 my main concerns is that PAHL is not before this Court and
5 that Premier wasn't, gave the Court grave concern at the
6 time. Perhaps now is the opportunity to correct the
7 situation that has bothered the Court for some time. The
8 Court has always been concerned about Premier not being
9 here.

10 So I'm not comfortable entertaining the argument,
11 well, Premier wasn't here, because, frankly, I think there
12 was a shell game going on there. So as far as I'm
13 concerned, that Premier wasn't here doesn't mean that the
14 Court shouldn't require PAHL, if they are going to take over
15 the operations.

16 So I'm not sure I'm comfortable with just something
17 on the record, unless they have made an appearance and bound
18 themselves to the jurisdiction of this Court because the
19 situation with R.M.S. Titanic and Premier has never been one
20 that the Court was particularly comfortable with.

21 The record will reflect that, as Mr. Wainger can
22 remember. So, consequently, I'm still not comfortable, and
23 I just found it very interesting that I'm approving an Asset
24 Purchase Agreement and the purchaser is not before the
25 Court. I've got a seller before the Court, and I don't have

1 the purchaser before the Court. So I don't know that I
2 should be approving that agreement. I'm just thinking out
3 loud right now. I'm not making any rulings.

4 MR. PORTER: Your Honor, I hope my choice of words
5 isn't construed as being that we have in some way just let
6 this go as the easiest solution. I can tell you that we
7 have not coordinated with R.M.S.T. on any of this, including
8 our recommendation till it was finalized and ready to come
9 to the Court, and then we provided them a copy mainly just
10 to make sure there wasn't issues with confidential
11 information.

12 THE COURT: I understand. I hope that following
13 this hearing, Mr. Porter, you will resume conversations with
14 Mr. McFarland and Mr. Wainger in regard to clearing up some
15 of the aspects of this order and talking about and having
16 been talked to PAHL or you about their position on making an
17 appearance before the Court.

18 MR. PORTER: We will certainly do so, Your Honor.

19 THE COURT: All right. Is there anything else that
20 the Court needs to take care of today, Mr. McFarland,
21 Mr. Wainger?

22 MR. MCFARLAND: I just wanted to clarify, Your
23 Honor. PAHL is a Delaware entity. The purchaser in this,
24 prospective purchaser, the bidding entity, PAHL, is a
25 Delaware limited liability corporation. It is made up of

1 certain members, the three main members, Alta, Apollo and
2 PacBridge. One of those three members is a Hong Kong
3 entity, but PAHL itself is a Delaware corporation.

4 THE COURT: I understand. You can go and incorporate
5 in Delaware. You can incorporate in Virginia. Being an
6 entity, a corporation chooses its place of incorporation and
7 its place of doing business.

8 MR. McFARLAND: Right.

9 THE COURT: Again, let's look at the substance of
10 what's going on, not just the appearance. In other words,
11 you can incorporate in any state in the United States and
12 you can incorporate, you can do McFarland Services, LLC, and
13 open up a business and a corporation and have an agent and
14 have your headquarters where you want it. Individuals do
15 that all the time.

16 MR. McFARLAND: But you've got a corporation, Your
17 Honor, that is a United States, i.e., Delaware, should be a
18 limited liability corporation that is in the United States.
19 I thought that was the Court's -- wasn't saying it was
20 dispositive, but at least the Court was considering that as
21 a factor. So it is a Delaware entity. It is not uncommon
22 that LLC, as Your Honor knows, often is composed of many,
23 many members, some of whom may be overseas.

24 THE COURT: An LLC can dissolve very easily.

25 MR. McFARLAND: It can.

1 THE COURT: I mean, I've had an LLC with my spouse,
2 and all you do is you open Holly Holdings LLC, and you hold
3 an asset there, and then you file corporate returns, and
4 when you decide you don't want to do it anymore, you
5 dissolve. You could have it today and it's gone tomorrow.
6 It just depends on what it's holding and whether you want to
7 keep holding it.

8 MR. McFARLAND: Exactly, Your Honor. But in that
9 sense what remains before this Court are the artifacts in
10 this Court's jurisdiction over R.M.S.T. and the American
11 collection with the covenants and conditions in places to
12 that. So, yes, the corporate entity could potentially
13 dissolve. But the American collection cannot be disposed of
14 without this Court's authorization.

15 In essence, I want to correct something else. Part
16 of the reason that this transaction is structured as it is,
17 is because the qualified institution, i.e., the trustee,
18 does not change. This is the same trustee, R.M.S.T., that
19 has been the trustee before this Court for, geez, I think we
20 are getting out about a decade now. We are very close in
21 terms of when the C&Cs were put into place. I think it's
22 2011, we are 2018 now.

23 Of course, R.M.S.T. as salvor, has been the salvor,
24 as the Court noted earlier at this hearing, for I think '94
25 to 2008, so for just, give or take, 25 years. So that's

1 critical, Your Honor. The trustee and the qualified
2 institution is not changing, and it remains before this
3 Court jurisdictionally-wise as well.

4 The other point I just want to say, Your Honor,
5 certainly we want the best options possible. What we are
6 presenting the Court is not just a last-minute
7 throw-together. This is the not just option but the Court
8 approved by the bankruptcy court result of a heavily
9 negotiated transaction that has been blessed by the Court.

10 THE COURT: It might be the best bankruptcy
11 outcome, but the bankruptcy court is different from this
12 Court sitting in admiralty jurisdiction.

13 MR. McFARLAND: Certainly.

14 THE COURT: The best outcome for this admiralty
15 court, sitting in admiralty jurisdiction, may not be the
16 best outcome that a bankruptcy court considers. They are
17 two entirely separate considerations with two different sets
18 of laws. I'm operating under the federal jurisdiction of
19 admiralty law, and the bankruptcy court is operating on a
20 different set of considerations. So that they determined
21 it's the best outcome in bankruptcy does not dictate that
22 this Court has to determine is the best outcome in salvage
23 law and admiralty law.

24 MR. McFARLAND: Right, Your Honor. But what this
25 Court is reviewing now is should it approve the Asset

1 Purchase Agreement and the stock sale of R.M.S.T. consistent
2 with retaining R.M.S.T. as the trustee qualified
3 institution. That's the issue before the Court, as I think
4 the government recognizes.

5 I appreciate what the Court is saying, so much
6 material has come in recently, and the Court needs to review
7 everything. It's our job to make sure the Court does
8 appreciate and does agree with us that it is the best
9 outcome for this Court's role in terms of admiralty
10 jurisdiction and in terms of this Court's role with respect
11 to the covenants and conditions.

12 I understand the Court still needs to review it,
13 and we need to provide some further things, and we will do
14 that. But we agree with the Court is saying, but the
15 solution that is being brought to this Court for this
16 Court's approval on those is, we think, and the evidence
17 shows, the appropriate outcome from all the way around, not
18 just the bankruptcy court.

19 I may do one other thing, Your Honor. I would like
20 to move into evidence the exhibits that we have submitted to
21 the Court over the past two weeks.

22 THE COURT: I will let you give those to the clerk,
23 and we will resume. I'll give the museum a quick chance to
24 represent anything that it wants, and I'll hear about the
25 EYOS expedition.

1 The Court will be in recess until 4:00 p.m.

2 (Recess from 3:42 p.m. to 4:03 p.m.)

3 THE COURT: Mr. Powers, is there anything you want
4 to represent to the Court today?

5 MR. POWERS: Briefly, Your Honor. May it please
6 the Court. Your Honor correctly pointed out that there is a
7 significant public interest in the preservation of this
8 collection. The public interest, Your Honor, is expressed
9 on Page 5 of the covenants and conditions, Section III,
10 Paragraph A, "The subject Titanic artifact collection shall,
11 to the maximum extent possible and consistent with
12 reasonable collections management practices, be conserved
13 and curated together with the French Titanic artifact
14 collection as an integral whole by the trustee."

15 Your Honor, it is in the public interest, it is in
16 the public interest that the collection be kept together and
17 not sold off piecemeal. I believe that is what the Court
18 wants, I'm confident that is what NOAA wants, and I'm
19 certain that is what the museum wants.

20 But to be clear, Your Honor, that is not what the
21 stalking horse purchaser wants. The stalking horse
22 purchaser, Your Honor, is made up of Chinese investors and
23 hedge funds. There is only one reason in the world why they
24 want this collection, Your Honor, and it is not altruistic.
25 It is not for the public interest. It is to make money.

1 The only way they are going to make money on this
2 depreciating asset is not by putting on exhibitions, it is
3 by selling the French collection. That's where the money
4 is. That is why you have hedge fund and Chinese investors
5 after this.

6 Your Honor, this Court has rightfully pointed out
7 its concerns that the stalking horse purchasers don't seem
8 anxious to be before the Court. They don't want to commit
9 to the jurisdiction of the Court. The reason, Your Honor,
10 is very simple. They have said, in no uncertain words, that
11 this Court has no jurisdiction over the French collection.
12 They've referred to the covenants and conditions as
13 precatory, merely aspirational, and they've made no really a
14 secret that as soon as the ink is dry on the order, they are
15 going to go back, whether it's 60 days from now, whether
16 it's six months from now, whether it's two years from now,
17 but they are going to be back and they are going to want to
18 sell the French collection. That's what this is all about,
19 Your Honor.

20 Your Honor does have the ability to rectify the
21 concerns that you had a decade ago with Premier
22 Acquisitions, or whatever their name is. You can put
23 conditions now on the stalking horse purchaser that they, as
24 part of the sale, approval of this deal, they commit to
25 keeping the collection together, they commit to the

1 jurisdiction of this Court, not some hollow Delaware entity,
2 but the officers and directors.

3 Do what the museum was willing to do. Subject
4 itself to the jurisdiction of this Court for the good of the
5 public interest in keeping the collection together, and
6 there will not be Armageddon, there will not be a doomsday
7 scenario if this deal doesn't go through. There would not
8 necessarily even be a liquidation, because the museum is
9 still here. We are still ready. To the extent that this
10 Court rejects this deal, it will go back to the bankruptcy
11 court.

12 This Court can put whatever terms and conditions on
13 it, and the best thing for the public interest, if it has to
14 be in private hands and not in a public institution where we
15 know it will be preserved, put terms on them. Make them
16 commit. Make them promise to this Court that they shall not
17 break up the collection, not what we keep hearing is, our
18 current intention is to abide as best as we can. Forget
19 about current intentions.

20 What are they going to do once this Court, if this
21 Court approves it? Therein lies the riddle. They want to
22 make money by selling the French collection, and you have
23 the ability to get them before the Court, to have them
24 subject themselves to the jurisdiction of this Court and to
25 have them promise that they will keep the collection

1 together as the museum would do. That's all we ask, Your
2 Honor, and we stand by ready, if for whatever reason the
3 Court does not approve this deal, our plan is still being
4 held in abeyance in the bankruptcy court. That is why we
5 are here, Your Honor. Thank you for hearing us.

6 MR. WAINGER: Your Honor, that was extraordinarily
7 bold for an entity that has no stake in these proceedings.

8 THE COURT: Well, number one, they have filed as a
9 movant, and they have filed a motion to intervene. I just
10 have not granted that yet. I invited Mr. Powers to speak.
11 He was here. He has filed papers in this court in regard to
12 this, and they are involved, and they have been involved in
13 the bankruptcy proceedings.

14 So go to the substance. I can decide whether they
15 are bold or not bold. If you want to address the substance
16 of what he said, do so.

17 MR. WAINGER: There is no basis in fact, that I am
18 aware of, that the stalking horse purchaser, that R.M.S.T
19 wants to break up this collection. Okay. That is creative
20 fiction. I can tell you today that if R.M.S.T. is acquired
21 under this transaction, it will submit to this Court's
22 orders, okay.

23 Now, we have been through many chapters with
24 respect to the French artifacts, okay. When counsel talks
25 about this Court ordering that the company not break up the

1 collection, we are disregarding the order of January 30th,
2 2006 from the Fourth Circuit that very clearly talked about
3 the jurisdiction of this Court with respect to the STAC and
4 with respect to the French artifacts.

5 If Your Honor remembers, we came to this court in
6 June of 2016, and we said, Premier Exhibitions, in an effort
7 to get out of this bankruptcy, is looking to sell some
8 French artifacts, a limited number of French artifacts.

9 THE COURT: I'm very aware of the status of the
10 French artifacts, and the covenants and conditions say to
11 the maximum extent possible, consistent with reasonable
12 collections management practices, that the Titanic artifact
13 collection be conserved and curated with the French
14 artifacts. That's what it says. The Court is well aware of
15 all of the rulings on this matter.

16 MR. WAINGER: So the point is, I guess, Your Honor,
17 is if these companies are ever to decide that that's where
18 they want to go, and I have no reason to believe that, I
19 have already told the Court that they intend to operate
20 these companies. If they make that decision, we are in
21 here.

22 THE COURT: How?

23 MR. WAINGER: How are we in here?

24 THE COURT: Yes. Why doesn't PAHL appear and
25 subject itself to the jurisdiction of this Court?

1 MR. WAINGER: Well, I think that as a matter of
2 corporate law, there is no reason -- they are not a party to
3 this matter, Judge. Premier wasn't a party. That is why we
4 ultimately decided that Premier didn't need to because we
5 are following black law corporate law.

6 THE COURT: I never agreed with you on that, and
7 I'm not going to revisit all of that. The bottom line is
8 I'm being asked to approve an Asset Purchase Agreement to
9 which they are the purchaser. So as far as I'm concerned,
10 they want me to approve an agreement, why don't they get
11 before this Court and have somebody argue why I should do
12 it? Have them represent to me. Why shouldn't somebody from
13 PAHL be here, an attorney, or one of the corporate officers,
14 somebody representing to this Court, either under oath as a
15 corporate officer, as an attorney, as an officer of this
16 Court, that when I approve the Asset Purchase Agreement, and
17 they are the purchaser, that they will abide by certain
18 things, and they will subject themselves to the jurisdiction
19 of this Court. If there is no subterfuge and no ulterior
20 plans, what's the problem with that?

21 MR. WAINGER: We understand the Court's position.
22 I will say this. I think that we are, on that point,
23 arguing about something that really doesn't make any
24 difference. If we consider that two of the three members of
25 PAHL are U.S. corporations headquartered in New York and

1 that the initial directors of R.M.S.T., should the
2 transaction go forward, are employees of those entities,
3 living in New York, it really doesn't make a difference. I
4 think everybody hears the Court's issue on that point.

5 I would simply say that it's a distinction that
6 doesn't make a difference in terms of the Court's ability to
7 control the artifacts and make its decisions. But we
8 understand the Court's position, and as we talked about with
9 NOAA, NOAA's suggestion that PAHL make formal
10 acknowledgement of the covenants and conditions, those are
11 the kinds of things that we will talk about in very short
12 order with my friends from the government to try to get the
13 Court the comfort it needs.

14 When the museum spoke just now, Your Honor, we went
15 back, and their suggestion is we are here so think about us.
16 Putting aside that they have no real value or stake in this,
17 harken back to Mr. Porter's comments that the stalking horse
18 purchaser might not be the perfect entity here, that was the
19 general comment. That kind of stuck in my side because,
20 Your Honor, that may be the government's position that they
21 want, in an ideal world, a knight in shining armor to
22 purchase a collection out of bankruptcy and donate it to a
23 museum, but that's not the reality.

24 So I think that we should all be extraordinarily
25 pleased that we had one group of folks willing to make this

1 commitment, because the alternative is such a disaster, and
2 I disagree that the museum thinks everything is fine, I
3 think this goes straight into liquidation, and then we are
4 litigating with a trustee for extended periods of time over
5 what really happens with these artifacts.

6 So I think we need to be thrilled that we have an
7 entity that still submits to this Court's jurisdiction, that
8 this Court will continue to keep its thumb over the
9 operation, that the operation will not change and will have
10 the same people involved. I think that is a wonderful
11 solution. I want to state for the record that we strongly
12 disagree, and the reason that PAHL is not here today in a
13 formal capacity, Your Honor, is because they are only one
14 party to this case. The parties are R.M.S.T. It is
15 R.M.S.T. who is asking the Court to approve its transaction.
16 It's not PAHL asking the Court. It's R.M.S.T. If we look
17 at the covenants and conditions, Your Honor.

18 THE COURT: Well, if you're going to talk about the
19 covenant and conditions, the covenants and conditions are
20 about a lot more than money.

21 MR. WAINGER: Absolutely.

22 THE COURT: What you all keep saying is, well, this
23 was the best deal. Now, a bankruptcy court is going to look
24 at it differently than this Court. I've said it over and
25 over. The covenants and conditions, if everybody agrees

1 they are bound by these, and the covenants and conditions
2 are there, there is the goal to preserve these artifacts as
3 a collection. There is a public interest goal. There are a
4 lot of goals here that transcend money.

5 So, consequently, I'm telling you that if everybody
6 is bound by these covenants and conditions, and you look to
7 what Mr. Powers referred to, and you look at them in
8 totality and even in segments, this is not just about money.
9 It's about preserving a historic collection. You're giving
10 me words, but nobody has given me the assurance that I want
11 to hear and pointed out to it. I can read agreements. I
12 know what 100 percent of buying shares is. It's almost a
13 bit insulting to the Court, frankly, when you say, well,
14 it's going to be this, Judge, it's going to be this.

15 I know what occurs when you sell 100 percent of
16 your stock to an entity. That entity owns 100 percent of
17 whatever you have, and it can do with it under the law
18 certain things. They're not before the Court to obligate
19 themselves to these covenants and conditions; yet, I'm being
20 asked to approve an Asset Purchase Agreement with that
21 entity as the purchaser of 100 percent of the stock of
22 R.M.S.T., the party that is before the Court.

23 MR. WAINGER: So, Your Honor, it is NOAA's
24 suggestion that we put on the record the formal
25 acknowledgement to be filed with the Court that PAHL is on

1 notice of the covenants and conditions and intends for
2 R.M.S.T. to continue to operate in conformance with them.

3 Is that what the Court wants? Would that satisfy
4 the Court's concern?

5 THE COURT: No.

6 MR. WAINGER: What precisely would satisfy the
7 Court's concern?

8 THE COURT: I have a little notepad here. It's a
9 little bit messy looking, but I only wrote down two or three
10 things before I came in here. The first one was the magic
11 of October 31. The second was, is who represents stalking
12 horse purchaser PAHL? Why have they not appeared before the
13 Court? That was my second question.

14 If you go back and look at the record, it was what
15 I said from the beginning. You are asking me to approve an
16 Asset Purchase Agreement with the purchaser not before this
17 Court.

18 R.M.S.T. is saying we want to sell 100 percent of
19 our shares to this purchaser, which in my mind is that
20 R.M.S.T. is, for all intents and purposes, it could be gone.

21 MR. WAINGER: No, no, I want to tell the Court very
22 candidly that it was my advice, not to a client, but in
23 conversation, that PAHL need not formally appear in this
24 Court because they are not a party and the corporate
25 formalities requires separation. So I personally am

1 responsible for that decision.

2 THE COURT: I thought they had their own attorneys.

3 MR. PORTER: They do. I'm not their counsel, but
4 in discussion, the issue is, as a matter of law, what should
5 R.M.S.T. do and should PAHL take a role here? We have taken
6 the position that the museum has no formal right to be here,
7 and it would be disingenuous to suggest that PAHL, who is
8 not also a party, should have a formal role in these
9 proceedings.

10 It is R.M.S.T., pursuant to the APA, that is asking
11 for that. So that's on me, Your Honor, and 100 percent
12 candid to the Court. We have all heard the Court say it
13 would have chosen instead to have seen papers from PAHL, and
14 we have heard the Court say that it thinks that PAHL's
15 submission to the end percent of jurisdiction would make the
16 Court --

17 THE COURT: I want them to appear before the Court.
18 Make an appearance. Subject yourself to the jurisdiction of
19 this Court. If you're saying to this Court that you want
20 this Court, and the bankruptcy court has recognized, this
21 Court has to approve that Asset Purchase Agreement.

22 MR. WAINGER: Okay.

23 THE COURT: You're coming and you're saying we want
24 you to approve our agreement, but we're not going to come
25 before the Court. We are going to leave it all up to

1 R.M.S.T., we are going to fully own it, as soon as you put
2 the ink on that Asset Purchase Agreement.

3 MR. WAINGER: We understand, Your Honor. As I
4 said, it was my recommendation based on my understanding of
5 the law and that the law of this case that PAHL should not
6 be here today formally. We hear the Court, and that will be
7 a decision for PAHL to make. The one thing that I think is
8 critical, Your Honor, is if the Court decides to enter an
9 approval order, that order must be -- PAHL has the option to
10 walk away.

11 THE COURT: Then that's their option. They're not
12 before the Court. If that's what they choose to do, then
13 that's their legal advice. I am not responsible for PAHL
14 walking or not walking from this agreement. I am
15 responsible, as the Federal Court sitting in admiralty
16 jurisdiction, to approve or not approve this Asset Purchase
17 Agreement pursuant to this Court's jurisdiction and the
18 covenants and conditions.

19 So if PAHL wants to walk, that's a decision they'll
20 have to make.

21 MR. WAINGER: I understand. I want everybody to
22 understand the big picture here, and as an officer of the
23 Court, Mr. McFarland and I have an obligation, both counsel
24 of record in the bankruptcy, as well, and so we have an
25 obligation to pursue a solution in the bankruptcy court that

1 is to the benefit of all the debtors, and we have the dual
2 responsibilities as officers of this Court to make sure that
3 whatever solution happens down there is good for this Court.

4 THE COURT: You had more than an obligation than
5 just to pursue the best for the bankruptcy court.

6 MR. WAINGER: I agree.

7 THE COURT: You had an obligation before this Court
8 to be sure that this Court's jurisdiction was not breached
9 and that this Court's covenants and conditions can and will
10 stay in effect, and one of the covenants and conditions is
11 that that collection stay as one collection. So you have
12 two duties. You not only have a duty in bankruptcy, as I
13 say, it's not all about money.

14 MR. WAINGER: I agree.

15 THE COURT: When R.M.S.T. was incorporated, and
16 they sold their stock, whatever people thought, whatever
17 reason they bought the stock, doesn't change the public
18 interest here, and it doesn't change the public interest of
19 salvage law.

20 MR. WAINGER: We are in violent agreement on that
21 point, Your Honor. We have dual obligation, and we worked
22 extraordinarily hard to create a transaction that honored
23 both obligations. That's the point I'm trying to make.

24 THE COURT: I don't think that you didn't work
25 extremely hard to get a transaction. But still I have to

1 approve it.

2 MR. WAINGER: Understood.

3 THE COURT: Perhaps, you've worked hard, but maybe,
4 perhaps, you haven't got an agreement that this Court is
5 going to approve because this Court feels like, for a number
6 of reasons, and I haven't pointed all of them out yet, that
7 there are a lot of jurisdictional loopholes in this
8 agreement.

9 You put a clause in there about exclusive salvage
10 rights into the future, and you leave it up to other courts
11 to determine whether the Asset Purchase Agreement has been
12 followed, and then you convey something, and I have approved
13 it, somebody could easily say, well, that Court approved an
14 Asset Purchase Agreement that transferred the salvage rights
15 to the buying entity.

16 MR. WAINGER: Let's be clear, Your Honor. That
17 Asset Purchase Agreement does not transfer.

18 THE COURT: I disagree with you. I disagree with
19 you. I went through those provisions with you, and at some
20 point, I'll go through them in, perhaps, more detail, I'm
21 sure I will, at our next hearing or whenever we convene and
22 try to work this out. I see provisions in there that are
23 contrary to this Court's jurisdiction. I went through them
24 with you earlier.

25 MR. WAINGER: I understand, Your Honor. The

1 salvage rights are one of the three types of assets held by
2 R.M.S.T., just the salvage rights, the artifacts, and the
3 IP. Those are all with R.M.S.T.

4 THE COURT: But you can't contract away the
5 exclusive salvage rights because you don't have them. You
6 are the salvor in possession currently. As I told you, and
7 I'm not going to go through it again, you don't have
8 permanent salvage rights. No entity does. That is the law.

9 MR. WAINGER: We agree with that.

10 THE COURT: You are a salvor in possession, and all
11 you can transfer is your current salvor-in-possession
12 rights.

13 MR. WAINGER: Agreed.

14 THE COURT: You cannot do it in perpetuity. The
15 only person who can give exclusive salvage rights is this
16 Court, and the only thing you can do is give your current,
17 whatever it is, your current salvor in possession.

18 MR. WAINGER: We agree.

19 THE COURT: That is one clause I can assure you I
20 will never approve.

21 MR. WAINGER: The word "exclusive" was simply part
22 of the order. It is not permanent. It is transient. We
23 agree. Again, there is no disagreement there, Your Honor.
24 I don't want to tread over again over anything that Your
25 Honor has already covered.

1 That's all I have. Your Honor had made a mention
2 of talking about the EYOS expedition. I'm happy to do that
3 very quickly or not.

4 THE COURT: Tell me what the status of it is.

5 MR. WAINGER: It took place. There were large
6 swells associated with a hurricane. They didn't conduct any
7 dives from the Titanic.

8 THE COURT: Okay. Have you all put that in a
9 report at all?

10 MR. PORTER: Your Honor, I believe I submitted a
11 status report with Mr. McCallum's report.

12 THE COURT: Because it wasn't a major issue today,
13 I didn't even bring that in.

14 Then the way I think we need to proceed is,
15 Mr. Porter, you need to continue -- I won't say go back to
16 the drawing boards because you all have done a lot of work,
17 I recognize that, but continue at the drawing boards, and if
18 you have something that you think is acceptable to present
19 to the Court, do so.

20 In the meantime, I'm going to go back through
21 everything that you've submitted, and I will reconvene as
22 appropriate to ask further questions, and you all work on an
23 order to present to me.

24 MR. PORTER: We will do that, Your Honor.

25 MR. McFARLAND: Your Honor, we would move into

1 evidence officially the materials that we have submitted to
2 Your Honor by letter over the last few days and certain
3 reports. We put them in a binder, and they are tabbed as
4 Exhibits A through L.

5 THE COURT: Can I see it for a minute, please?
6 Just so the record is clear, A is the order with the APA and
7 amendment to the APA. That's Exhibit A dated 10-19-18.

8 Exhibit B is the transcript of the bankruptcy
9 proceedings that occurred on 10-18-10.

10 MR. McFARLAND: If I just may clarify, I think what
11 the date is the date it was submitted to the Court.

12 THE COURT: Excuse me.

13 MR. McFARLAND: So the order with the APA goes back
14 to 10-18.

15 THE COURT: They will be filed. I'm just going to
16 go through them and say what it is. A is the order with the
17 APA and amendment to the APA submitted to the Court on
18 10-19-18. I'm reading from a list so that the record
19 doesn't look like I'm jumbling through papers.

20 Exhibit B in your index is the transcript of the
21 bankruptcy proceedings, if it's the transcript I received.

22 MR. McFARLAND: Correct, Your Honor.

23 THE COURT: It was received on 10-18-18.

24 C is the Gallo letter received 10-24-18. Is that
25 the date of the letter?

1 MR. McFARLAND: That is the date of the letter.

2 THE COURT: Because I didn't get that until today.

3 MR. McFARLAND: Right. Maybe, Your Honor, we can
4 give the Court a revised listing of the exhibits. They
5 don't change in terms of their substance, obviously.

6 THE COURT: That's okay. I just want it on the
7 record what we have. I will restate. C is the Gallo
8 letter. D is the Klingelhofer letter. E is the Nargeolet
9 letter. F is one of the status reports. That, I think, is
10 the date of the status report.

11 MR. McFARLAND: That is, Your Honor. That actually
12 is in the Court record in the sense it was filed.

13 THE COURT: 10-15 status report. There is H, which
14 is the periodic report of R.M.S. Titanic.

15 I is a periodic report of R.M.S. Titanic.

16 J is NOAA's report and recommendation.

17 K is a letter enclosure with a periodic report.

18 L is a letter enclosure with a periodic report. I
19 will check these exhibits against the ones that I have and
20 be sure that they match, and I will admit all of them with
21 that understanding that we'll check that and be sure
22 everything is ready to go into the record.

23 (The documents were received in evidence and marked
24 as Exhibits A through L.)

25 MR. McFARLAND: The other thing we would like to

1 provide to the Court, Your Honor, is when we did our due
2 diligence or our responses to NOAA's two requests for
3 information, we gave them certain exhibits. Those have
4 confidential and proprietary information, so we would follow
5 the Court's sealing procedures and submit those to the Court
6 either redacted to or under seal, and we will get those in
7 promptly.

8 THE COURT: I would tell you that that question was
9 raised to me by the clerk, and I did say that I would not
10 accept anything that was not going to be made public unless
11 the sealing procedures were followed where you file a motion
12 to seal, which is public, a memorandum in support of that
13 motion to seal, which is public, and you submit a redacted
14 copy for the public, and a redacted copy that would be under
15 seal if the Court grants your motion.

16 MR. McFARLAND: Right.

17 THE COURT: I would also tell you that someone
18 indicated that the status reports that had been filed
19 through the years were not of record but they all are of
20 record.

21 The clerk has been entering the status report, and
22 they are all kept in paper, but they all correspond to that
23 docket number. I'm going to have the clerk go back and
24 electronically enter all of those status reports. But if
25 anybody wants to see them, all you've got to do is say I

1 want to see the status report docket entry number whatever
2 filed such and such a date, and the clerk has it.

3 So I want that to be clear on the record. Someone
4 said, well, no status reports have been filed, only the
5 cover letters. I said there is not any way that something
6 sent to the clerk of our court hasn't been filed if it's
7 docketed there, and they have been. I want to make that
8 clear to everybody, that all you do is go, and it says
9 status report and docket number, and you walk into the
10 clerk's office, and they can pull that status report.

11 I'm going to make it easier for everybody, it may
12 take us awhile, but I'm going to have them all
13 electronically entered so you can go back and see them.

14 All right. Is there anything else?

15 MR. PORTER: Nothing further, Your Honor. Thank
16 you.

17 THE COURT: We will stand in recess until further
18 notice, and please get something to the Court for me to
19 consider as soon as possible.

20 MR. McFARLAND: Will do, Your Honor.

21 (Hearing adjourned at 4:33 p.m.)
22
23
24
25

CERTIFICATION

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

X _____ /s/ _____ x

Jody A. Stewart

X _____ 10-29-2018 _____ x

Date

JODY A. STEWART, Official Court Reporter